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CITY COUNCIL  
CITY OF WICHITA  
KANSAS

City Council Meeting  
09:00 a.m. April 17, 2012

City Council Chambers  
455 North Main

**OPENING OF REGULAR MEETING**

- Call to Order
- Invocation
- Pledge of Allegiance
- Approve the minutes of the regular meeting on April 10, 2012

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**AWARDS AND PROCLAMATIONS**

- Proclamations:
  - Wichita Arbor Day
  - Celebrate Earth Week
  - Commercial Real Estate Week

**I. PUBLIC AGENDA**

NOTICE: No action will be taken relative to items on this agenda other than referral for information. Requests to appear will be placed on a "first-come, first-served" basis. This portion of the meeting is limited to thirty minutes and shall be subject to a limitation of five minutes for each presentation with no extension of time permitted. No speaker shall be allowed to appear more frequently than once every fourth meeting. Members of the public desiring to present matters to the Council on the public agenda must submit a request in writing to the office of the city manager prior to twelve noon on the Tuesday preceding the council meeting. Matter pertaining to personnel, litigation and violations of laws and ordinances are excluded from the agenda. Rules of decorum as provided in this code will be observed.

1. Andrew Crane - Discuss the operation of the City's bus system.
2. Eugene Albright - Paving Boston between Pattie and Laura.

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**II. CONSENT AGENDAS (ITEMS 1 THROUGH 14)**

NOTICE: Items listed under the "Consent Agendas" will be enacted by one motion with no separate discussion. If discussion on an item is desired, the item will be removed from the "Consent Agendas" and considered separately

*(The Council will be considering the City Council Consent Agenda as well as the Planning, Housing, and Airport Consent Agendas. Please see "ATTACHMENT 1 – CONSENT AGENDA ITEMS" for a listing of all Consent Agenda Items.)*

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**COUNCIL BUSINESS**

**III. UNFINISHED COUNCIL BUSINESS**

1. Amendments to Criminal Code, Chapter 5 of the Code of the City of Wichita relating to Crime and Punishment for Criminal Offenses. (Deferred April 3, 2012)

RECOMMENDED ACTION: Place the ordinance on first reading and authorize the necessary signatures.

2. Kingsbury Tract, Future Park Site Development. (District VI)  
(Deferred April 3, 2012)

RECOMMENDED ACTION: Approve the Supplemental Agreement, adopt the Bonding Resolution, and authorize the necessary signatures.

**IV. NEW COUNCIL BUSINESS**

1. Appeal to City Council of a Protest by Universal Oil of the Award of Group 1 Contract FB 130274.

RECOMMENDED ACTION: Reaffirm its award of Group 1 of Contract FB 130274 to Crossfaith Ventures, LC.

2. Wichita Employees' Retirement and Police and Fire Retirement Systems Actuarial Valuation Reports as of December 31, 2011.

RECOMMENDED ACTION: Receive and file the Wichita Employees' Retirement and Police and Fire Retirement Systems' Actuarial Valuation Reports as of December 31, 2011 as submitted, and approve the 2013 employer retirement fund contribution rates.

3. REAP Consortium Agreement for South Central Kansas Sustainable Communities.

RECOMMENDED ACTION: Approve the Consortium Agreement, authorize the necessary signatures, and authorize the Mayor to designate a Primary Point of Contact.

4. Design Supplemental Agreement No. 3 – East Kellogg, Cypress to 127th Street East, Project I. (District II)

RECOMMENDED ACTION: Approve Supplemental Agreement No. 3, increase the budget, place the ordinance on first reading and authorize the necessary signatures.

5. An Ordinance Amendment pertaining to exemption of public property from the prohibition against alcohol consumption – outdoor city-owned property around the Intrust Bank Arena and the site of the Kansas African American Museum.

RECOMMENDED ACTION: Approve first reading of the ordinance.



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**COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES**

**PLANNING AGENDA**

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

**V. NON-CONSENT PLANNING AGENDA**

None

**HOUSING AGENDA**

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

**Fern Griffith, Housing Member is also seated with the City Council.**

**VI. NON-CONSENT HOUSING AGENDA**

None

**AIRPORT AGENDA**

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

**VII. NON-CONSENT AIRPORT AGENDA**

None

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**COUNCIL AGENDA**

**VIII. COUNCIL MEMBER AGENDA**

1. Approval of travel expenses for Council Member Pete Meitzner and Wichita Area Sister Cities representatives April Leason and Hetty Bailey to attend by invitation, an official visit to our Sister City in Orleans, France, May 10-14, 2012.

RECOMMENDED ACTION: Approve the expenditures.

**IX. COUNCIL MEMBER APPOINTMENTS**

1. Board Appointments.

RECOMMENDED ACTION: Approve the Appointments.

Adjournment

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(ATTACHMENT 1 – CONSENT AGENDA ITEMS I THROUGH 14)

**II. CITY COUNCIL CONSENT AGENDA ITEMS**

1. Report of Board of Bids and Contracts dated April 16, 2012.

RECOMMENDED ACTION: Receive and file report; approve Contracts;  
authorize necessary signatures.

2. Applications for Licenses:

<u>Name</u>	<u>2012</u>	<u>Address</u>
Lewis F. Self	After Dark Video	3721 South Broadway
Lewis F. Self	After Dark Video	2809 North Broadway
Gail R Crump	Gs Entertainment/dba Adult Superstore	5858 South Broadway

RECOMMENDED ACTION: Approve the licenses.

3. Applications for Licenses to Retail Cereal Malt Beverages:

<u>Renewal</u>	<u>2012</u>	<u>(Consumption on Premises)</u>
Roberto Beltran	Taco's Mexican Food LLC**	1930 East Pawnee

<u>Renewal</u>	<u>2012</u>	<u>(Consumption off Premises)</u>
Maria S Mercado	La Tapatia Market LLC***	1953 South Seneca

\*\*General/Restaurant 50% or more gross revenue from sale of food.

\*\*\*Consumption/Retailer grocery stores, convenience stores etc.

RECOMMENDED ACTION: Approve licenses subject to Staff review and approval.

4. Preliminary Estimates:

RECOMMENDED ACTION: Receive and file.

5. Deeds and Easements:

- a. List of Deeds and Easements.

RECOMMENDED ACTION: Accept documents.

6. Consideration of Street Closures/Uses.

- a. Community Events - Ride for the Red. (District I)

RECOMMENDED ACTION: Approve the request subject to; (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Securing a Certificate of Liability Insurance on file with the Community Events Coordinator.

7. Agreements/Contracts:

- a. Title Insurance, Abstract and Other Related Services – Selection of Vendor.

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

8. Property Acquisitions:

- a. Partial Acquisition at 4500 North Seneca for the Wichita-Valley Center Flood Control Levee Certification and Rehabilitation Project. (District VI)  
b. Acquisition of 527 South Webb Road for the Improvement of the Kellogg Avenue (US Highway 54) from Cypress to Chateau. (District II)  
c. Acquisition of Access Control at 13200 West Kellogg for the West Kellogg Freeway Project. (Districts IV and V)

RECOMMENDED ACTION: Approve budgets and Contracts; authorize necessary signatures.

9. Minutes of Advisory Boards/Commissions

Police and Fire and Retirement System, February 22, 2012  
Board of Code Standards and Appeals, March 5, 2012  
Wichita Airport Advisory Board, March 5, 2012  
Joint Investment Committee, January 5, 2012 (Corrected)  
Joint Investment Committee, March 1, 2012

RECOMMENDED ACTION: Receive and file.

10. Sale of City Properties at 1405, 1457, 1503 and 1515 South 119th. (District V)

RECOMMENDED ACTION: Approve the Real Estate Purchase Agreement and authorize all necessary signatures.

11. WaterWalk, Waltzing Waters Plaza Sound System. (District I)

RECOMMENDED ACTION: Approve the proposal and authorize the issuance of a purchase order.

12. Second Reading Ordinances: (First Read April 10, 2012)  
List of Second Reading Ordinances.

RECOMMENDED ACTION: Adopt the Ordinances.

## **II. CONSENT PLANNING AGENDA ITEMS**

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

13. \*ZON2012-00004 – City zone change from SF-5 Single-family Residential (“SF-5”) to LI Limited Industrial (“LI”) generally located between South Maize Road and South Tyler Road, along the north side of K-42.  
(District IV)

RECOMMENDED ACTION: Adopt the findings of the MAPC and approve the zone change request, subject to platting within one year, authorize the Mayor to sign the ordinance and place the ordinance on first reading (simple majority required). (An override of the Planning Commission’s recommendation requires a two-thirds majority vote of the City Council on the first hearing.)

## **II. CONSENT HOUSING AGENDA ITEMS**

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

**Fern Griffith, Housing Member is also seated with the City Council.**

None

## **II. CONSENT AIRPORT AGENDA ITEMS**

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

14. \*Construction Related Services Contract - Bombardier Learjet Parking Improvements - Wichita Mid-Continent Airport.

RECOMMENDED ACTION: Approve the construction related services contract and authorize the necessary signatures.

**City of Wichita  
City Council Meeting  
April 17, 2012**

**TO:** Mayor and City Council

**SUBJECT:** Amendments to Criminal Code, Chapter 5 of the Code of the City of Wichita  
Relating to Crime and Punishment for Criminal Offenses

**INITIATED BY:** Wichita Police Department and Law Department

**AGENDA:** Unfinished Business

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**Recommendation:** Place the ordinances on first reading.

**Background:** In 2009, the Kansas Criminal Code Recodification Commission released its final report regarding proposed changes to the Kansas Criminal Code. The Commission was comprised of citizens, law enforcement officers and prosecutors throughout the State of Kansas to review and make recommended changes to the Kansas Criminal Code. The Commission recommended extensive changes to the criminal code regarding renumbering and reorganization of the statutes. The Commission also recommended substantive changes to the levels of intent required for criminal offenses.

In 2010, the Kansas Legislature passed amendments to the state statutes consistent with the Commission's recommendations. The Law Department reviewed pertinent City Code provisions, Titles 1 (Code Interpretation), 4 (Intoxicating Liquor), 5 (Public Safety) and 6 (Animal Control) and prepared the necessary amendments to bring the City's ordinances into compliance with the state law provisions.

Changes were made to the City's ordinances with mandatory minimum periods of incarceration that exceeded those mandated by state statute. On April 3, 2012, the proposed amendments were considered by the City Council. Chapter 5 changes were deferred to allow council members time to consider the amendments regarding the domestic battery ordinance.

**Analysis:** The amendments bring the City's ordinances into compliance with the terminology used in the state criminal code. The amendments adopt the intent language utilized by the state in defining criminal offenses. The elements necessary to prove crimes under the City's ordinances will mirror the state law requirements. Further, the proposed amendments remove mandatory minimum jail sentences. The removal of the minimum sentences will reduce jail overcrowding and provide municipal court judges flexibility in sentencing repeat offenders to jail. The types of crimes for which the mandatory minimum sentences were removed are battery, prostitution and prostitution in emphasis areas.

The look-back period for determining first and second convictions for domestic violence offenses was shortened to conform to State law provisions. In determining a second or subsequent offense for sentencing purposes, State law only considered convictions within the five years preceding the date of the offense. The City's ordinances considered all earlier convictions.

House Bill 2166 amends K.S.A. 12-3007 regarding the publication requirements of city ordinances. The bill has been approved and signed by the Governor. The bill allows, in lieu of publication of the entire text of an amended ordinance, that a summary may be published. Staff is recommending delaying publication of these amendments until after July 1, 2012. Delay of the publication of the ordinance will result in a budget savings of approximately \$3,500.

**Financial Considerations:** Removing mandatory minimum jail sentences will decrease the length of time City defendants are held in the county jail and, thereby, decrease the amount of jail fees being paid to Sedgwick County for the incarceration of municipal court defendants.

Delaying publication of the ordinances until after July 1, 2012 will save approximately \$3,500 in publication costs.

**Goal Impact:** Amendments will assist in providing a Safe and Secure community.

**Legal Considerations:** The ordinance amendments have been prepared and approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the City Council place the ordinance on first reading and authorize the necessary signatures.

**Attachment:** Ordinances

First Published in The Wichita Eagle on July 1, 2012

04/04/2012

ORDINANCE NO. 49-256

AN ORDINANCE AMENDING SECTIONS 5.01.020, 5.10.010, 5.10.020, 5.10.025, 5.10.035, 5.15.010, 5.24.010, 5.24.040, 5.26.020, 5.28.010, 5.30.020, 5.32.010, 5.36.030, 5.38.036, 5.42.010, 5.42.015, 5.42.020, 5.42.035, 5.42.060, 5.44.040, 5.66.010, 5.66.050, 5.68.005, 5.68.020, 5.68.030, 5.68.110, 5.68.120, 5.68.140, 5.68.150, 5.68.155, 5.68.156, 5.68.170, 5.68.180, 5.68.190, 5.68.200, 5.68.215, 5.68.220, 5.72.010, 5.73.050, 5.75.010, 5.75.020, 5.82.010, 5.88.020 AND 5.88.030 CREATING SECTIONS 5.26.038, 5.26.039, 5.37.030, 5.42.005, 5.42.065, 5.85.010 AND 5.85.020 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO PUBLIC SAFETY AND MORALS AND REPEALING THE ORIGINALS OF SECTIONS 5.01.020, 5.10.010, 5.10.020, 5.10.025, 5.10.035, 5.15.010, 5.24.010, 5.24.040, 5.26.020, 5.28.010, 5.30.020, 5.32.010, 5.36.030, 5.38.036, 5.42.010, 5.42.015, 5.42.020, 5.42.035, 5.42.060, 5.44.040, 5.66.010, 5.66.050, 5.68.020, 5.68.030, 5.68.110, 5.68.120, 5.68.140, 5.68.150, 5.68.155, 5.68.156, 5.68.170, 5.68.180, 5.68.190, 5.68.200, 5.68.215, 5.68.220, 5.72.010, 5.73.050, 5.75.010, 5.75.020, 5.82.010, 5.88.020 AND 5.88.030 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 5.01.020 of the Code of the City of Wichita, Kansas, pertaining to ethnic intimidation, is hereby amended to read as follows:

**“Penalty.** (a) Upon a ~~first~~ conviction of a violation of the provisions of this chapter a person shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than two hundred fifty dollars nor more than two thousand five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.”



SECTION 2. Section 5.10.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Assault deemed misdemeanor.** Any person who, within the corporate limits of the city, knowingly places another person in reasonable apprehension of immediate bodily harm, is guilty of a misdemeanor. No bodily contact is necessary."

SECTION 3. Section 5.10.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Battery deemed misdemeanor.** (a) Any person who, within the corporate limits of the city, (1) knowingly or recklessly causes bodily harm to another person or (2) knowingly causes physical contact with another person when done in a rude, insulting or angry manner, is guilty of a misdemeanor.

(b) Every person convicted under this section, shall be punished by fine of not more than one thousand dollars or one year imprisonment or both such fine and imprisonment."

SECTION 4. Section 5.10.025 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Domestic battery.** (a) Any person who, within the corporate limits of the city, (1) knowingly or recklessly causes bodily harm to a family or household member or to an individual with whom the person is involved or has been involved in a dating relationship or (2) knowingly causes physical contact with a family or household member or to an individual with whom the person is

involved or has been involved in a dating relationship when done in a rude, insulting or angry manner, is guilty of a misdemeanor.

(b) As used in subsection (a) of this section, "family or household member" means persons eighteen years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or who have lived together at any time. Family or household member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time.

(c) As used in subsection (a) of this section 'dating relationship' means a social relationship of a romantic nature. In addition to any other factors the court deems relevant, the trier of fact may consider the following when making a determination of whether a relationship exists or existed: nature of the relationship, length of time the relationship existed, frequency of interaction between the parties and the time since termination of the relationship, if applicable.

(d) Upon a first conviction, a person shall be sentenced to not less than forty-eight consecutive hours nor more than six months' imprisonment and fined not less than two hundred dollars, nor more than five hundred dollars. In lieu of the mandatory sentence, the court, in its discretion, may enter an order which requires the person to enroll in and successfully complete a court-approved domestic violence prevention program.

(e) Upon a second conviction within five years immediately preceding the commission of the crime, a person shall be sentenced to not less than ninety days nor more than one year's imprisonment and a fine of not less than five hundred dollars nor more than one thousand dollars. Upon a second conviction, the court shall impose a mandatory minimum jail sentence of five consecutive days and no person shall be eligible for probation or parole until serving the entire minimum sentence. The five days' imprisonment may be served in a work release or house arrest program only after such person has served forty-eight consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The offender shall serve at least five consecutive days imprisonment before the offender is granted probation, suspension or reduction of sentence. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a court-approved treatment program for domestic violence prevention.

(f) For the purposes of determining whether a conviction is a first, second, or subsequent conviction in sentencing under this section:

(1) 'Conviction' includes being convicted of a violation of this section, or entering into a deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging violation of this section.

(2) 'Conviction' includes being convicted of a violation of a law of this state or of another state or an ordinance of any municipality which prohibits the acts that this section prohibit or entering into a

diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such a law or ordinance;

(3) Only convictions occurring in the immediately preceding five years shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first or second offense, whichever is applicable;

(4) It is irrelevant whether an offense occurred before or after conviction for a previous offense.”

SECTION 5. Section 5.10.035 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Battery of a law enforcement officer.** (a) Any person who, within the corporate limits of the city:

(1) knowingly or recklessly causes bodily harm or

(2) knowingly causes physical contact with a uniformed or properly identified state, county or city law enforcement officer while such officer is engaged in the performance of such officer's duty, in a rude, insulting or angry manner, is guilty of a misdemeanor.

(b) Every person convicted under this section, shall be punished by fine of not more than two thousand five hundred dollars or one year imprisonment or both such fine and imprisonment.”

SECTION 6. Section 5.15.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Victim or witness intimidation.** (a) Intimidation of a witness or victim is preventing or dissuading, or attempting to prevent or dissuade with an intent to vex, annoy, harm or injure in any way another person or an intent to thwart or interfere in any manner with the orderly administration of justice:

(1) Any witness or victim from attending or giving testimony at any criminal trial, proceeding or inquiry authorized by law; or

(2) Any witness, victim or person acting on behalf of a victim from:

a. Making any report of the victimization of a victim to any law enforcement officer, prosecutor, probation officer, correctional officer, judicial officer or emergency communications dispatcher.

b. Causing a complaint to be sought and prosecuted, or causing a violation of probation or parole to be reported and prosecuted, and assisting in its prosecution.

c. Arresting or causing or seeking the arrest of any person in connection with the victimization of a victim.

(b) The following definitional sections shall apply to this section:

(1) "Victim" means any individual against whom any crime under the laws of this state, this municipality or any

municipality in this state, is being, has been or is attempted to be committed;

(2) "Witness" means any individual:

a. Who has knowledge of the existence or nonexistence of facts relating to any criminal trial, proceeding or inquiry authorized by law.

b. Whose declaration under oath is received or has been received as evidence for any purpose.

c. Who has reported any crime to any law enforcement officer, prosecutor, probation officer, parole officer, correctional officer, community correctional services officer or judicial officer, or any emergency communications dispatcher.

d. Who has been served with a subpoena issued under the authority of a municipal court or any court or agency of this state, or

e. Who would be believed by any reasonable person to be an individual described in this subsection.

(c) Intimidation of a victim or witness is a misdemeanor, and such sentence shall include a term of imprisonment of not more than six months and/or a one thousand dollar fine or both such fine and imprisonment.”

SECTION 7. Section 5.24.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Disorderly conduct.** Disorderly conduct is, one or more of the following acts that the person knows or should know will alarm, anger or disturb others or provoke an assault or other breach of the peace:

- (a) Engaging in brawling or fighting; or
- (b) Disturbing an assembly, meeting, or procession, not unlawful in its character; or
- (c) Using fighting words or engaging in noisy conduct tending to reasonably arouse alarm, anger or resentment in others.

As used in this section, ‘fighting words’ means words that by their very utterance inflict injury or tend to incite the listener to an immediate breach of peace.

Every person convicted of violating this section shall be punished by imprisonment of a term not to exceed thirty (30) days or a fine of not more than five hundred dollars (\$500.00) or both such imprisonment and fine.”

SECTION 8. Section 5.24.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Same—Penalty.** Unless otherwise specified, violation of any of the provisions of this chapter constitutes a misdemeanor, and any violation thereof shall be punished by a fine of not more than five hundred dollars, or one year imprisonment, or by both such fine and imprisonment.”

SECTION 9. Section 5.26.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Unlawful acts regarding depressants, stimulants or other substances.**

Except as authorized by the Uniform Controlled Substances Act, K.S.A. 65-4101, et seq., no person shall possess or have under such person's control any of the following controlled substances or controlled substance analogs thereof:

- (a) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;
- (b) Any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;
- (c) Any substance designated in subsection (g) of K.S.A. 65-4105, and amendments thereto, and designated in subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111 and amendments thereto; or
- (d) Any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109 and amendments thereto;
- (e) Any substance designated in K.S.A. 65-4113 and amendments thereto;
- (f) Any substance designated in subsection (h) of K.S.A. 65-4105 and amendments thereto.”



SECTION 10. Section 5.26.038 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Distribution of Controlled Substance.** It shall be unlawful for any person to distribute or possess with the intent to distribute any controlled substance or a controlled substance analog designated in K.S.A. 65-4113 and amendments thereto to a person who is over the age of eighteen (18).”

SECTION 11. Section 5.26.039 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Unlawful Possession of a Simulated Controlled Substance.** It shall be unlawful for any person to use or possess with the intent to use a simulated controlled substance.”

SECTION 12. Section 5.28.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**Inhalation unlawful—Exceptions.** (A) Abusing toxic vapors is ~~knowingly~~ possessing, buying, using, smelling or inhaling the fumes of toxic vapors with the intent of causing a condition of euphoria, excitement, exhilaration, stupefaction, or dulled senses of the nervous system, or to sell, give, or offer to sell or give to any other person any of the elements, compounds or combination of both elements and compounds as defined in subsection (D), if such person has knowledge that the product will be used in violation of this section.

(B) This subsection shall not apply to the inhalation of anesthesia or other substances for medical or dental purposes.

(C) Abusing toxic vapors is a misdemeanor, and such sentence shall include a term of imprisonment of not more than six months and/or a one thousand dollar fine. In addition to any sentence or fine imposed, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program as provided in K.S.A. 8-1008, and amendments thereto, or both the education and treatment programs.

(D) For the purposes of this section, the term "toxic vapors" means the following substances or products containing such substances:

- (1) Alcohols, including methyl, isopropyl, propyl or butyl;
- (2) Aliphatic acetates, including ethyl, methyl, propyl or methyl cellosolve acetate;
- (3) Acetone;
- (4) Benzene;
- (5) Carbon tetrachloride;
- (6) Cyclohexane;
- (7) Freons, including freon 11 and freon 12;
- (8) Hexane;
- (9) Methyl ethyl ketone;
- (10) Methyl isobutyl ketone;
- (11) Naphtha;
- (12) Perchlorethylene;
- (13) Toluene;

(14) Trichloroethane; or

(15) Xylene.

(E) In a prosecution for a violation of this section, evidence that a container lists one or more of the substances described in subsection (D) as one of its ingredients shall be prima facie evidence that the substance in such container contains toxic vapors and emits the fumes thereof.”

SECTION 13. Section 5.30/020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Report required-** (a) Unlawful failure to report a wound is, with no requirement of a culpable mental state, the failure by an attending physician or other person to report such person’s treatment of any of the following wounds, to the office of the Chief of Police of the city or the office of the Sheriff of the county in which such treatment took place:

(1) Any bullet wound, gunshot wound, powder burn or other injury arising from or caused by the discharge of a firearm; or

(2) any wound which is likely to or may result in death and is apparently inflicted by a knife, ice pick or other sharp or pointed instrument.

(b) Unlawful failure to report a wound is a misdemeanor, punishable by a fine not to exceed five hundred dollars (\$500) and thirty (30) days imprisonment, or by both such fine and imprisonment.”

SECTION 14. Section 5.32.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“False Alarm.** (a) Any person who transmits in any manner to the Fire Department of any city or county a false alarm of fire, knowing at the time of such transmission that there is no reasonable ground for believing that such fire exists,; or

(b) Any person who makes a call in any manner for emergency service assistance including police fire, medical or other emergency service, at the time of such call that there is no reasonable ground for believing such assistance is needed, is guilty of a misdemeanor.

(c) Any person convicted of giving a false alarm shall be punished by a fine of not more than two thousand five hundred dollars (\$2,500) or one year imprisonment, or both such fine and imprisonment.”

SECTION 15. Section 5.36.030 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Permitting premises to be used for gambling.** Permitting premises to be used for gambling is knowingly:

(a) Granting the use or allowing the continued use of a place as a gambling place; or

(b) Permitting another to set up a gambling device for use in a place under the offender's control.

(c) Anyone violating any of the provisions of this section shall be guilty of a misdemeanor and shall be punished as set forth in Section 5.36.050, and any amendments thereto.”

SECTION 16. Section 5.37.030 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Defacement or damage of property by graffiti.** Any person who writes, sprays, scratches or otherwise affixes graffiti upon any property, public or private, in which another has an interest and without the consent of such other person shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than two hundred fifty dollars (\$250.00) or more than one thousand dollars (\$1,000.00), or by imprisonment for not more than six (6) months, or by both such fine and imprisonment. In addition to such penalty the court may order the defendant to perform the necessary labor to clean up, repair, or replace the property damaged by that person, or to pay any costs incurred by the owner or the City of Wichita related to the cleanup, repair or replacement of property damaged by that person.”

SECTION 17. Section 5.38.036 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Fraud and cheating in obtaining accommodations.** (a) Any person who shall obtain food, lodging or other accommodations with a value of two hundred dollars or less, at any inn, restaurant, hotel, boarding house, apartment house, dwelling unit or rooming house by means of any trick, deception or false representation, statement or pretense, with intent to defraud the owner or keeper

thereof, and shall fail or refuse to pay therefor, shall be deemed guilty of a misdemeanor.

(b) Any person convicted of violating Section 5.38.046 shall be punished by a fine not to exceed five hundred dollars (\$500) or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.”

SECTION 18. Section 5.42.005 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“**Definitions.** As used in this chapter, the following terms shall have the following meanings:

(a) ‘Deception’ means knowingly creating or reinforcing a false impression, including false impressions as to law, value, intention or other state of mind. Deception as to a person’s intention to perform a promise shall not be inferred from the fact alone that such person did not subsequently perform the promise. Falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive reasonable persons, is not deception.

(b) ‘Deprive permanently’ means to:

(1) Take from the owner the possession, use or benefit of property, without an intent to restore the same;

(2) retain property without intent to restore the same or with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

(3) sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner.

(c) 'Obtain' means to bring about a transfer of interest in or possession of property, whether to the offender or to another.

(d) 'Obtains or exerts control' over property includes, but is not limited to, the taking, carrying away, sale, conveyance, transfer of title to, interest in, or possession of property.

(e) 'Owner' means a person who has any interest in property;

(f) 'Property' means anything of value, tangible or intangible, real or personal;

(g) 'Services' means labor, professional services, cable television service, public or municipal utility or transportation service, telephone service, entertainment and the supplying of equipment for use.

(h) 'Stolen property' means property over which control has been obtained by theft.

(i) 'Threat' means a communicated intent to inflict physical or other harm on any person or on property."

SECTION 19. Section 5.42.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Petit theft.** Petit theft is any of the following acts done with intent to deprive the owner permanently of the possession, use or benefit of his property:

(a) Obtaining or exerting unauthorized control over property or services having a value of less than one thousand dollars;

(b) Obtaining by deception control over property or services having a value of less than one thousand dollars;

(c) Obtaining by threat control over property or services having a value of less than one thousand dollars;

(d) Obtaining control over property or services having a value of less than one thousand dollars knowing the property to have been stolen by another.

Any person convicted of petit theft shall be deemed guilty of a misdemeanor, and shall be punished by a fine not to exceed two thousand five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment. In addition, whenever any person is convicted of petit theft, the court shall order such person to be fingerprinted and photographed immediately following such conviction unless such person has already been photographed and fingerprinted when charged with the specific offense which is the subject of such conviction.”

SECTION 20. Section 5.42.015 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Prima facie evidence of intent to permanently deprive owner or lessor of possession, use or benefit of property. (a)** In any prosecution under this title, the following shall be prima facie evidence of intent to permanently deprive the owner or lessor of property of the possession, use or benefit thereof:

(1) The giving of a false identification or fictitious name, address or place of employment at the time of obtaining control over the property;

(2) The failure of a person who leases or rents personal property to return the same within ten days after the date set forth in the



lease or rental agreement for the return of the property, if notice is given to the person renting or leasing the property to return the property within seven days after receipt of notice, in which case the subsequent return of the property within the seven-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section;

(3) Destroying, breaking or opening a lock, chain, key switch, enclosure or other device used to secure the property in order to obtain control over the property;

(4) Destruction of or substantially damaging or altering the property so as to make the property unusable or unrecognizable in order to obtain control over the property.

(5) The failure of a person who leases or rents from a commercial renter a motor vehicle under a written agreement that provides for the return of the motor vehicle to a particular place at a particular time, if notice has been given to the person renting or leasing the motor vehicle to return such vehicle within three calendar days from the date of the receipt or refusal of the demand. In addition, if such vehicle has not been returned after demand, the lessor may notify the local law enforcement agency of the failure of the lessee to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into any appropriate state and local computer system listing stolen motor vehicles;

(6) The failure of a person who is provided with a use of a vehicle by the owner of the vehicle to return it to the owner pursuant to a written instruction specifying:

(A) The time and place to return the vehicle; and

(B) That failure to comply may be prosecuted as theft, and such instructions are delivered to the person by the owner at the time the person is provided with possession of the vehicle. In addition, if such vehicle has not been returned pursuant to the specifications in such instructions, the owner may notify the local law enforcement agency of the failure of the person to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into any appropriate state and local computer system listing stolen motor vehicles;

(7) Removing a theft detection device, without authority, from merchandise or disabling such device prior to purchase; or

(8) The failure to replace or reattach the nozzle and hose of the pump used for the dispensing of motor fuels or placing such nozzle and hose on the ground or pavement.

(b) In any prosecution for a misdemeanor in which the object of the alleged theft is a book or other material borrowed from a library, it shall be prima facie evidence of intent to permanently deprive the owner of the possession, use or benefit thereof if the defendant failed to return such book or material within 30

days after receiving notice from the library requesting its return, in which case the subsequent return of the book or material within the 30-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section.

(c) In a prosecution for theft as defined in this chapter, and such theft is of services, the existence of any of the connections of meters, alterations or use of unauthorized or unmeasured electricity, natural gas, water, telephone service or cable television service, caused by tampering, shall be prima facie evidence of intent to commit theft of services by the person or persons using or receiving the direct benefits from the use of the electricity, natural gas, water, telephone service of cable television service passing through such connections or meters, or using the electricity, natural gas, water, telephone service or cable television service which has not been authorized or measured. Tampering includes, but is not limited to:

(1) Making a connection of any wire, conduit or device, to any service or transmission line owned by a public or municipal utility, or by a cable television service provider;

(2) Defacing, puncturing, removing, reversing or altering any meter or any connections, for the purpose of securing unauthorized or unmeasured electricity, natural gas, water, telephone service or cable television service;

(3) Preventing any such meters from properly measuring or registering;

(4) Knowingly taking, receiving, using or converging to such person's own use, or the use of another, any electricity, water or natural gas which has not been measured; or any telephone or cable television service which has not been authorized; or

(5) Causing, procuring, permitting, aiding or abetting any person to do any of the preceding acts.

(d) The word "notice" as used herein shall be construed to mean notice in writing and such notice in writing will be presumed to have been given three days following deposit of the notice as registered or certified matter in the United States mail, addressed to such person who has leased or rented the personal property at the address as it appears in the information supplied by such person at the time of such leasing or renting, or to such person's last known address."

SECTION 21. Section 5.42.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Giving a worthless check.** (a) Giving a worthless check is the making, drawing, issuing, or delivering or causing or directing the making, drawing, issuing or delivering of any check, order or draft on any bank, credit union, savings and loan association or depository for the payment of money or its equivalent with intent to defraud and knowing, at the time of the making, drawing, issuing or delivering of such check, order or draft, that the maker or drawer has no deposit in or credits with the drawee or has not sufficient funds in, or credits with, the drawee for the payment of such check, order or draft in full upon its presentation.

(b) Subsection (1) of this section shall apply if the check, draft or order is drawn for less than one thousand dollars.

(c) In any prosecution against the maker or drawer of a check, order or draft, payment of which has been refused by the drawee on account of insufficient funds, the making, drawing, issuing or delivering of such check shall be prima facie evidence of intent to defraud and of knowledge of insufficient funds in, or on deposit with the drawee; (1) unless the maker or drawer pays the holder thereof the amount due thereon and a service charge not exceeding thirty dollars for each check, within seven days after notice has been given to the maker or drawer that such check, draft or order has not been paid by the drawee; or (2) if a postdated date is placed on the check, order or draft without the knowledge or consent of the payee.

(d) As used in this section, the word 'notice' shall have the following meaning:

(1) 'Notice' includes oral or written notice to the person entitled thereto. Written notice shall be presumed to have been given when deposited as restricted matter in the United States Mail, addressed to the person to be given notice at such person's address as it appears on such check, draft or order. Check is any check, order or draft on a financial institution. Financial institution means any bank, credit union, savings and loan association or depository.

(e) It shall not be a defense to a prosecution under this section that the check, draft or order upon which such prosecution is based:

(1) Was postdated, unless such check, draft or order was presented for payment prior to the posted date; or

(2) Was given to a payee who had knowledge or had been informed when the payee accepted such check, draft or order, that the maker did not have sufficient funds in the hands of the drawee to pay such check, draft or order upon presentation, unless such check, draft or order was presented for payment prior to the date the maker informed the payee there would be sufficient funds.

(f) Penalty. Any person convicted of giving a worthless check is guilty of a misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars or by imprisonment for not more than one year or by both such fine and imprisonment.”

SECTION 22. Section 5.42.035 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Unlawful use of a financial card.** (a) Criminal use of a financial card is any of the following acts done with intent to defraud and for the purpose of obtaining money, goods, property, or services.

(1) Using a financial card without the consent of the card holder; or

(2) Knowingly using a financial card, or the number or description thereof, which has been revoked or canceled; or

(3) Using a falsified, mutilated, altered or nonexistent financial card or a number or description thereof.

(b) For the purposes of this section:

(1) 'Financial Card' means an identification card, plate, instrument, device, or number issued by a business organization authorizing the card holder to purchase, lease, or otherwise obtain money, goods, property, services or communication services or to conduct other financial transactions.

(2) 'Card holder' means the person or entity to whom or for whose benefit a financial card is issued.

(3) For the purposes of subsection (a)(2) hereof, a financial card shall be deemed canceled or revoked when notice in writing thereof has been received by the named holder thereof as shown on such financial card or by the records of the company.

(c) Penalty. Criminal use of a financial card is a misdemeanor if the money, goods, property or services obtained within a seven-day period are of the value of less than one thousand dollars. Any person convicted of criminal use of a financial card shall be punished by a fine not to exceed two thousand five hundred dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment."

SECTION 23. Section 5.42.060 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Theft of lost or mislaid property.** Any person who fails to take reasonable measures to restore lost, mislaid or property delivered to them by a mistake, to the owner, when the person has obtained control of such property,

who knows or learns the identity of the owner thereof, and who intends to deprive the owner permanently of the possession, use or benefit of such property, shall be deemed guilty of a misdemeanor, and any person convicted thereof shall be punished by a fine not to exceed two thousand five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.”

SECTION 24. Section 5.42.065 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Receiving stolen property.** (a) A person commits the crime of receiving stolen property, with a value of less than one thousand dollars, if for the purposes of depriving the owner of a lawful interest therein, he or she receives, retains or disposes of property of another knowing that it has been stolen, or believing that it has been stolen.

(b) Evidence of the following is admissible in any criminal prosecution pursuant to this section to prove the requisite knowledge or belief of the alleged receiver:

(1) That he or she was found in possession or control of other property stolen on separate occasions from two or more persons;

(2) That he or she received other stolen property in another transaction within the year preceding the transaction charged;

(3) That he or she acquired the stolen property for a consideration which he or she knew was far below its reasonable value;



(4) That he or she obtained control over stolen property knowing the property to have been stolen or under such circumstances as would reasonably induce a person to believe the property was stolen.”

SECTION 25. Section 5.44 040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Illegal dumping.** (a) It is unlawful to dump or cause to be dumped any wasted matter in or upon any public or private highway or road, including any portion of the right-of-way thereof, or in or upon any private property into or upon which the public is admitted by easement or license, or upon any private property without the consent of the owner, or in or upon any public park or other public property other than property designated or set aside for the purpose by the governing body having charge of that property.

(b) Any person violating this section is guilty of a misdemeanor. Each day that waste placed, deposited, or dumped in violation of this section remains is a separate violation.

(c) This section does not restrict a private owner in the use of his or her own private property, unless the placing, depositing, or dumping of the waste matter on the property creates a public health and safety hazard, a public nuisance, or a fire hazard, as determined by the health department.

(d) Whenever waste dumped in violation of this section is discovered to contain any article or articles, including but not limited to letters, bills, publications or other writings which display the name of a person thereon, addressed to such person or in any other manner indicating that the article belongs

or belonged to such person, it shall be a rebuttable presumption that such person has violated this chapter. Presumptions in this section may be overcome by proof that the person identified from the letter of other item caused the waste to be collected and transported for disposal at an approved site by a person licensed by the city to collect and dispose of solid waste.

(e) Any person convicted of a violation of this section shall be punished by a mandatory fine of not less than two hundred fifty dollars nor more than one thousand dollars upon a first conviction, or by imprisonment for not more than twelve months, or by both such fine and imprisonment. Upon a second or subsequent conviction by a mandatory fine of not less than one thousand dollars nor more than two thousand dollars or by imprisonment for not more than twelve months, or by both such fine and imprisonment. If upon the trial of any person found guilty of a misdemeanor hereunder, it shall appear to the court that the violation complained of is continuing, the court shall enter such order as it shall deem appropriate to cause the violation to be abated.

(f) The court may require, in addition to any fine imposed upon a conviction, that, as a condition of probation and in addition to any other condition of probation, a person convicted under this section remove, or pay the cost of removing, any waste matter which the convicted person dumped or caused to be dumped upon public or private property.

(g) Except when the court requires the convicted person to remove waste matter which he or she is responsible for dumping as a condition of probation, the court may, in addition to the fine imposed upon a conviction,

require as a condition of probation, in addition to any other conditions of probation, that any person convicted of a violation of this section pick up waste matter at a time and place within the jurisdiction of the court for not less than twelve hours.

(h) Any person who places, deposits, or dumps, or causes to be placed, deposited, or dumped, waste matter in violation of this section in bulk quantities, tires, furniture, or appliances shall be guilty of a misdemeanor, and upon a first conviction thereof shall be punished by a fine of not less than five hundred dollars or more than one thousand dollars, or by imprisonment for not more than twelve months, or by both such fine and imprisonment. Upon a second or subsequent conviction shall be punished by a fine of not less than one thousand dollars nor more than two thousand dollars, or by imprisonment for not more than twelve months, or by both such fine and imprisonment. If upon trial of any person found guilty of a misdemeanor hereunder, it shall appear to the court that the violation complained of is continuing, the court shall enter such order as it shall deem appropriate to cause the violation to be abated.

(i) Except in unusual cases where the interests of justice would be best served by waiving or reducing the fine, the minimum fines provided by this section shall not be waived or reduced. Except that the court may order that the defendant perform community service specified by the court in lieu of the mandatory fines imposed, but such an order shall be entered only after the court has required the defendant to file an affidavit of such defendant's financial

condition as required by Section 1.04.210(e) and amendments thereto, and the court has found from the information contained in the affidavit that the defendant is financially unable to pay the fines imposed.“

SECTION 26. Section 5.66.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Criminal damage to property.** (a) Criminal damage to property is by means other than by fire or explosive:

(1) Knowingly damaging, mutilating, defacing, destroying, or substantially impairing the use of any property, in which another has an interest without the consent of such other person; or

(2) Damaging, mutilating, defacing, destroying or substantially impairing the use of any property, with intent to injure or defraud an insurer or lienholder.

(b) Criminal damage to property is a misdemeanor if the property damaged is of a value of less than one thousand dollars, or is of the value of one thousand dollars or more and is damaged to the extent of less than one thousand dollars.

(c) Penalty. Any person who is convicted of criminal damage to property shall be deemed guilty of a misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment.”

SECTION 27. Section 5.66.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Criminal trespass.** Criminal trespass is entering or remaining upon or in any land, structure, vehicle, aircraft or watercraft by a person who knows he/she is not authorized or privileged to do so, and:

(a) Such person enters or remains therein in defiance of an order not to enter or to leave such premises on property personally communicated to such person by the owner thereof or other authorized person; or

(b) Such premises or property are posted in a manner reasonably likely to come to the attention of intruders, or are locked or fenced or otherwise enclosed, or shut or secured against passage or entries; or

(c) Such person enters or remains therein in defiance of a restraining order issued pursuant to K.S.A. 60-1607, 60-3105, 60-3106, 60-3107, and any amendments to said statutory sections, and the restraining order has been personally served upon the person so restrained.

(d) Entering or remaining upon or in any public or private land or structure in a manner that interferes with access to or from any health care facility by a person who knows such person is not authorized or privileged to do so and such person enters or remains thereon or therein in defiance of an order not to enter or to leave such land or structure personally communicated to such person by the owner.

(1) As used in this section:

(A) 'Health care facility'" means any licensed medical care facility, certificated health maintenance organization, licensed mental health center, or mental health clinic, licensed psychiatric hospital or other facility or office where services of a health care provider are provided directly to patients.

(B) 'Health care provider' means any person: (1) Licensed to practice a branch of the healing arts; (2) licensed to practice psychology; (3) licensed to practice professional or practical nursing; (4) licensed to practice dentistry; (5) licensed to practice optometry; (6) licensed to practice pharmacy; (7) registered to practice podiatry; (8) licensed as a social worker; or (9) registered to practice physical therapy.

(e) Any person who commits a criminal trespass with the corporate limits of the city of Wichita shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or imprisonment which shall not exceed six months, or by both such fine and imprisonment.

(f) Upon conviction of subsection (c) of this section, a person shall be sentenced to not less than forty-eight consecutive hours of imprisonment which must be served either before or as a condition of any grant of probation, suspension or reduction of sentence. Such imprisonment may be served in work release or house arrest."

SECTION 28. Section 5.66.055 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Interference with the conduct of a lawful business.** (a) Interference with the conduct of a lawful business is:

(1) Conduct at or in any building owned, operated or controlled by a private individual or corporation that knowingly causes an obstruction to or interference with the free and uninterrupted use of such property as a lawful business by any employee, patron, patient or other invitee on such premises, or which prevents the free and uninterrupted ingress, egress or regress therein, thereon or thereto;

(2) Knowingly refusing or failing to leave any such building owned, operated or controlled by a private individual or corporation upon being requested to do so by the owner thereof, any law enforcement officer or other authorized individual.

(b) Any person who violates any of the provisions of this chapter within the corporate limits of the city shall be deemed guilty of a misdemeanor and upon conviction hereof shall be punished by the following fines:

(1) Upon a first conviction, not more than two thousand five hundred dollars:

(2) Upon a second conviction, not less than two hundred fifty dollars nor more than two thousand five hundred dollars;

(3) Upon a third conviction, not less than five hundred dollars nor more than two thousand five hundred dollars;

(4) Upon a fourth conviction, not less than seven hundred fifty dollars nor more than two thousand five hundred dollars;

(5) Upon a fifth conviction, not less than one thousand dollars; nor more than two thousand five hundred dollars;

(6) Upon a sixth conviction, not less than one thousand two hundred fifty dollars nor more than two thousand five hundred dollars;

(7) Upon a seventh conviction, not less than one thousand five hundred dollars nor more than two thousand five hundred dollars;

(8) Upon a eighth conviction, not less than one thousand seven hundred fifty dollars nor more than two thousand five hundred dollars;

(9) Upon a ninth conviction, not less than two thousand dollars nor more than two thousand five hundred dollars;

(10) Upon a tenth conviction, not less than two thousand two hundred fifty dollars nor more than two thousand five hundred dollars;

(11) And upon an eleventh or subsequent conviction, not less than two thousand five hundred dollars.

In addition to the preceding fines such person may be punished by a term of imprisonment which shall not exceed six months, or by both such fines and imprisonment.

(c) The imposition of the fines established in subparagraphs (b)(2) through (11) herein shall be mandatory and the court shall not waive, remit, suspend, parole or otherwise excuse the payment thereof except that the court may order that the defendant perform community service specified by the court



but such an order shall be entered only after the court has required the defendant to file an affidavit of such defendant's financial condition as required by Section 1.04.210(e) and amendments thereto, and the court has found from the information contained in the affidavit that the defendant is financially unable to pay the fines imposed herein.

(d) For the purposes of determining whether a conviction is a first or subsequent conviction in sentencing under this section, conviction includes being convicted of a violation of this section, and it is irrelevant whether an offense occurred before or after conviction for a previous offense.”

SECTION 29. Section 5.68.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Patronizing a prostitute.** Any person who patronizes a prostitute is guilty of a misdemeanor. For purposes of this chapter, "patronizing a prostitute" shall mean:

(a) Knowingly entering or remaining in a house of prostitution with the intent to engage in sexual intercourse or any unlawful sexual acts with a prostitute; or

(b) Knowingly hiring a prostitute to engage in sexual intercourse or any unlawful sexual act;

(c) Every person convicted under this section (5.68.020), shall be punished by a fine of not more than five hundred dollars or six months imprisonment or both such fine and imprisonment.”

SECTION 30. Section 5.68.030 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Promoting prostitution.** (a) Any persons who knowingly commit any of the following acts when the prostitute is sixteen or more years of age, shall be deemed guilty of a misdemeanor.

(1) Establishing, owning, maintaining or managing a house of prostitution, or participating in the establishment, ownership, maintenance or management thereof;

(2) Permitting any place partially or wholly owned or controlled by the defendant to be used as a house of prostitution;

(3) Procuring a prostitute for a house of prostitution;

(4) Inducing another to become a prostitute;

(5) Soliciting a patron for a prostitute or for a house of prostitution;

(6) Procuring a prostitute for a patron;

(7) Procuring transportation for, paying for the transportation of or transporting a person within the state with the intention of assisting or promoting that person's engaging in prostitution; or

(8) Being employed to perform any act which is prohibited by this section.

(b) Every person convicted under this section (5.68.030) shall be punished by a fine of not more than five hundred dollars or six months imprisonment or both such fine and imprisonment.”

SECTION 31. Section 5.68.110 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Soliciting for immoral purposes.** (a) It is unlawful to solicit any person upon the streets or in public places within the corporate limits of the city, to engage in an act of prostitution, sodomy or sodomy for hire.

(b) For the purposes of this section, the following terms shall have the meanings respectively ascribed to them:

(1) "Public place" is any place to which the general public has access and a right to resort for business, entertainment or other lawful purpose, but does not necessarily mean a place devoted solely to the uses of the public. Such term also includes the front or immediate area of any store, shop, restaurant, tavern or other place of business and all public grounds, areas and parks.

(2) "Prostitution" is sexual intercourse for hire.

(3) "Sodomy" is oral or anal copulation between persons who are not husband and wife or consenting adult members of the opposite sex, or between a person and an animal, or coitus with an animal.

(4) "Sodomy for hire" is an act of oral or anal copulation for hire.

(c) Any person violating the provisions of this section (5.68.110) shall be deemed guilty of a misdemeanor, and any person convicted thereof shall be punished by a fine of not more than five hundred dollars or six months imprisonment or by both such fine and imprisonment.”

SECTION 32. Section 5.68.120 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Adultery.** Adultery is sexual intercourse or sodomy by a person with another who is not his spouse if (a) such person is married; or (b) such person is not married and knows that the other involved in such intercourse is married. Any person who shall be deemed guilty of adultery shall be guilty of a misdemeanor, and any person convicted thereof shall be punished by a fine not to exceed five hundred dollars and/or imprisonment of thirty days or both such fine and/or imprisonment.”

SECTION 33. Section 5.68.140 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Lewd and lascivious behavior.** Lewd and lascivious behavior is:

(a) Publicly engaging in otherwise lawful sexual intercourse or sodomy with any person or animal with knowledge or reasonable anticipation that the participants are being viewed by others who are sixteen or more years of age; or

(b) Publicly exposing a sex organ or exposing a sex organ in the presence of a person who is sixteen or more years of age, is not the spouse of the offender and who has not consented thereto, with intent to arouse or gratify the sexual desires of the offender or another.

Any person committing lewd and lascivious behavior shall be deemed guilty of a misdemeanor, and any person convicted thereof shall be punished by a

fine of not more than five hundred dollars or six months; imprisonment, or both such fine and imprisonment.”

SECTION 34. Section 5.68.150 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Promoting obscenity unlawful—Definitions—Evidence—Defense to prosecution—Exceptions—Penalty.**

(a) It is declared to be unlawful to promote obscenity or to promote obscenity to minors. Promoting obscenity is recklessly:

(1) Manufacturing, selling, giving, providing, lending, mailing, delivering, transmitting, publishing, distributing, circulating, disseminating, presenting, exhibiting or advertising any obscene material or obscene device; or

(2) Possessing any obscene material or obscene device with intent to sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise such material or obscene device; or

(3) Offering or agreeing to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise any obscene material; or

(4) Producing, presenting or directing an obscene performance or participating in a portion thereof which is obscene or which contributes to its obscenity.

(b) Evidence that materials or devices were promoted to emphasize their prurient appeal or sexual provocative aspect shall be relevant in determining the question of the obscenity of such materials or devices. There shall be a presumption that a person promoting obscene materials or obscene devices did so recklessly if:

(1) The materials or devices were promoted to emphasize their prurient appeal; or

(2) The person is not a wholesaler and promotes the materials or devices in the course of the person's business.

(c) (1) Any material or performance is "obscene" if:

a. The average person applying contemporary community standards would find that the material or performance, taken as a whole, appeals to the prurient interest;

b. The average person applying contemporary community standards would find that the material or performance has patently offensive representations or descriptions of (A) ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse or sodomy, or (B) masturbation, excretory functions, sadomasochistic abuse or lewd exhibition of the genitals; and

c. Taken as a whole, a reasonable person would find that the material, or performance, lacks serious literary, educational, artistic, political or scientific value.

(2) 'Material' means any tangible thing which is capable of being used or adopted to arouse interest, whether through the medium of reading, observation, sound or other manner.

(3) 'Obscene device' means a device, including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs, except such devices disseminated or promoted for the purpose of medical or psychological therapy.

(4) 'Performance' means any play, motion picture, dance or other exhibition performed before an audience.

(5) 'Sexual intercourse' and 'sodomy' have the meanings provided by K.S.A. 21-5501 and amendments thereto.

(6) 'Wholesaler' means a person who sells, distributes or offers for sale or distribution obscene materials only for resale and not to the consumer and who does not manufacture, publish or produce such materials or devices.

(d) It is a defense to a prosecution for obscenity that:

(1) The persons to whom the allegedly obscene material or obscene device was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational or governmental justification for possessing or viewing the same.

(2) The defendant is an officer, director, trustee or employee of a public library and the allegedly obscene material was acquired by such

library and was disseminated in accordance with regular library policies approved by its governing body; or

(3) The allegedly obscene material or obscene device was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incident to an approved course or program of instruction at such school.

(e) The provisions of this section which prescribe a criminal penalty for exhibit of any obscene motion picture shown in a commercial showing to the general public shall not apply to a projectionist, or assistant projectionist, if such projectionist or assistant projectionist has no financial interest in the show or in its place of presentation other than regular employment as a projectionist or assistant projectionist and no personal knowledge of the contents of the motion picture. The provisions of this section shall not exempt any projectionist or assistant projectionist from criminal liability for any act unrelated to projection of motion pictures in commercial showings to the general public.

(f) Promoting obscenity is declared to be a misdemeanor punishable upon conviction by a fine of not more than two thousand five hundred dollars, or by imprisonment in the city jail for a period of not exceeding one year, or both such fine and imprisonment.

(g) Upon any conviction for promoting obscenity, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter



into a reasonable recognizance with good and sufficient surety, in such sum as the court may direct, but not to exceed fifty thousand dollars, conditioned to the effect that in the event the defendant is convicted of a subsequent offense of promoting obscenity within two years after such conviction, he shall forfeit the recognizance.”

SECTION 35. Section 5.68.155 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Promoting obscenity to minors—Defined—Defense to prosecution—**

**Penalty.** (a) Promoting obscenity to minors is promoting obscenity where the recipient of the obscene material, device, or a member of the audience of an obscene performance is a child under the age of eighteen years. Any material, device or performance is ‘obscene’ if the average person applying contemporary community standards would find that such material or performance, taken as a whole, appeals to the prurient interest; that the material, device or performance has patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, and that the material, device or performance, taken as a whole, lacks serious literary, educational, artistic, political or scientific value.

(b) Notwithstanding the provisions of K.S.A. 21-5204, to the contrary, it shall be an affirmative defense to any prosecution under this section that:

(1) The defendant had reasonable cause to believe that the minor involved was eighteen years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate or other

official or apparently official document purporting to establish that such minor was eighteen years old or more; or

(2) An exhibition in a state of nudity is for a bona fide scientific or medical purpose or for an educational or cultural purpose for a bona fide school, museum or library.

(c) Promoting obscenity to minors is a misdemeanor, punishable upon conviction by a fine of not more than two thousand five hundred dollars, or by imprisonment in the city jail for a period of not exceeding one year, or both such fine and imprisonment.

(d) Upon any conviction for promoting obscenity to minors, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter into a reasonable recognizance with good and sufficient surety, in such sum as the court may direct, but not to exceed fifty thousand dollars, conditioned to the effect that in the event the defendant is convicted of a subsequent offense of promoting obscenity to minors within two years after such conviction, he shall forfeit the recognizance.”

SECTION 36. Section 5.68.156 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Displaying material harmful to minors.** (a) Definitions.

(1) ‘Blinder Rack’ means a device in which material is displayed in a manner that the lower two-thirds (2/3) of the material is not exposed to view;

(2) 'Harmful to minors' means that quality of any description, exhibition, presentation or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sadomasochistic abuse when the material or performance, taken as a whole or with respect to a prosecution for an act described by subsection (2)(a) of this section, that portion of the material that was actually exposed to the view of minors, has the following characteristics:

a. The average adult person applying contemporary community standards would find that the material, device or performance has a predominant tendency to appeal to a prurient interest in sex to minors; and

b. The average adult person applying contemporary community standards would find that the material, device or performance depicts or describes nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and

(c) A reasonable person would find that the material, device or performance lacks serious literary, scientific, educational, artistic or political value for minors.

(3) 'Material' means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, or recording tape, video tape.

(4) 'Minor' means any unmarried person under the age of eighteen years.

(5) 'Nudity' means the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering; the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernible state of sexual excitement;

(6) 'Performance' means any motion picture, film, video tape, played record, phonograph, or tape recording, preview, trailer, play, show, skit, dance or other exhibition performed or presented to or before an audience of one or more, with or without consideration.

(7) 'Person' means any individual, partnership, association, corporation, or other legal entity of any kind.

(8) A 'reasonable bona fide attempt' means an attempt to ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate or other governmental or educational identification card or paper and not relying solely on the oral allegations or apparent age of the minor.

(9) 'Sadomasochistic abuse' means flagellation or torture by or upon a person clad in undergarments, mask or bizarre costume, or in the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(10) 'Sexual conduct' means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, a female's, breast.

(11) 'Sexual excitement' means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(b) Offenses. No person having custody, control or supervision of any commercial establishment shall knowingly:

(1) Display any material which is harmful to minors in such a way that minors, as a part of the invited general public, will be exposed to view such material or device; provided, however, a person shall be deemed not to have "displayed" material harmful to minors if the material is kept behind devices commonly known as "blinder racks" so that the lower two-thirds of the material is not exposed to view;

(2) Sell, furnish, present, distribute, allow to view, or otherwise disseminate to a minor, with or without consideration, any material or device which is harmful to minors; or

(3) Present to a minor or participate in presenting to a minor, with or without consideration, any performance which is harmful to a minor.

(c) Defenses. It shall be an affirmative defense to any prosecution under this section that:

(1) The allegedly harmful material or device was purchased, leased or otherwise acquired by a public, private or parochial school,

college or university, and that such material was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incidental to an approved course or program of instruction at such school.

(2) The defendant is an officer, director, trustee or employee of a public library and the allegedly harmful material or device was acquired by a public library and was disseminated in accordance with regular library policies approved by its governing body.

(3) An exhibition in a state of nudity is for a bona fide scientific or medical purpose, or for an educational or cultural purpose for a bona fide school, museum or library.

(4) With respect to a prosecution for an act described by subsection (b)(1) of this section, the allegedly harmful material was kept behind blinder racks.

(5) With respect to a prosecution for an act described by subsection (b)(1) or (b)(2) of this section, the defendant had reasonable cause to believe that the minor involved was eighteen years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was eighteen years old or more.

(6) With respect to a prosecution for an act described by subsection (b)(3) of this section, the allegedly harmful performance was

viewed by the minor in the presence of such minor's parent or parents or such minor's legal guardian.

(d) The provisions of Section 5.68.156 shall not apply to a retail sales clerk, if such clerk has no financial interest in the materials or performance or in the commercial establishment displaying or selling, furnishing, presenting such performance other than regular employment as a retail sales clerk. The provisions of this section shall not exempt any retail sales clerk from criminal liability for any act unrelated to regular employment as a retail sales clerk.

(e) If any provision or clause of this Section 5.68.156 or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the section act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

(f) Penalties. Any person who shall be convicted of violating any provision of this section is guilty of a misdemeanor and shall be fined a sum not exceeding one thousand dollars and may be confined in jail for a definite term which shall be fixed by the court and shall not exceed ~~one~~ six months. Each day that any violation of this section occurs or continues shall constitute a separate offense and shall be punishable as a separate violation. Every act, thing or transaction prohibited by this section shall constitute a separate offense as to each item, issue or title involved and shall be punishable as such. For the purpose of this section, multiple copies of the same identical title, monthly issue, volume and number issue or other such identical material shall constitute a single offense.”

SECTION 37. Section 5.68.170 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Sodomy for hire.** (a) Any person who commits sodomy for hire is guilty of a misdemeanor.

(b) For purposes of this section, "sodomy for hire" is defined as performing, or offering or agreeing to perform an act of oral copulation or anal copulation for hire.

(c) Every person convicted under this section (5.68.170), shall be punished by a fine of not more than five hundred dollars or six months' imprisonment or both such fine and imprisonment.”

SECTION 38. Section 5.68.180 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Patronizing a person offering sodomy for hire.** (a) Any person who patronizes a person offering sodomy for hire, as defined in Section 5.68.170, is guilty of a misdemeanor.

(b) For purposes of this section, "patronizing a person offering sodomy for hire" means knowingly hiring a person to engage in oral copulation or anal copulation.

(c) Every person convicted under this section (5.68.180), shall be punished by a fine of not more than five hundred dollars or six months' imprisonment or both such fine and imprisonment.”



SECTION 39. Section 5.68.190 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Promoting sodomy for hire.** (a) Any person committing any of the following acts shall be deemed guilty of a misdemeanor:

(1) Establishing, owning, maintaining or managing a place where sodomy for hire is committed or participating in the establishment, ownership, maintenance or management thereof;

(2) Permitting any place partially or wholly owned or controlled by the defendant to be used as a place where sodomy for hire is committed;

(3) Procuring or inducing another to engage in sodomy for hire;

(4) Soliciting a patron for a person offering sodomy for hire;

(5) Procuring transportation for, paying for the transportation of or transporting a person within the city with the intention of assisting or promoting that person's engaging in sodomy for hire;

(6) Being employed to perform any act which is prohibited by this section.

(b) For purposes of this section, "sodomy for hire" is defined as performing, or offering or agreeing to perform, an act of oral copulation or anal copulation for hire.

(c) Every person convicted under this section (5.68.190), shall be punished by a fine of not more than five hundred dollars or six months' imprisonment or both such fine and imprisonment.”

SECTION 40. Section 5.68.200 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“**Sodomy.** (a) Any person who commits sodomy (1) with another person who is sixteen or more years of age and members of the same sex, or (2) with an animal, is guilty of a misdemeanor.

(b) Every person convicted under this section shall be punished by a fine of not more than five hundred dollars, or by confinement for a period of six months, or by both such fine and imprisonment.”

SECTION 41. Section 5.68.220 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“**Sexual battery.** (a) Sexual battery is the touching of a victim who is sixteen or more years of age, who is not the spouse of the offender and who does not consent thereto, with the intent to arouse or satisfy the sexual desires of the offender or another.

(b) Any person who violates the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than two thousand five hundred dollars or twelve months imprisonment or by both such fine and imprisonment.”

SECTION 42. Section 5.68.215 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Anti-prostitution emphasis area—Enhanced penalties.**

(a) The following described area of the city is designated to be an anti-prostitution emphasis area:

(1) An area bounded to the north at Twenty-First Street, on the east by Washington, on the south by Second Street, and on the west by Main Street, which becomes Park Place, which encompasses all areas within those parameters, including the property on both sides of each of the boundary streets.

(2) An area bounded to the north at Waterman, on the east by Washington, on the south by Forty-Seventh Street South, and to the west by Wichita, which encompasses all areas within those parameters, including the property on both sides of each of the boundary streets.

(3) An area bounded to the north by Thirteenth Street, on the east by Hillside, on the south by Second Street, and on the west by Cleveland, which encompasses all areas within those parameters, and including the property on both sides of each of the boundary streets.

(b) Any person who commits an unlawful act of prostitution, or a prostitution-related act within the area set forth in subsection (a) is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than two thousand five hundred dollars or one year's imprisonment, or by both such fine and imprisonment. Upon a ~~first~~ conviction of a violation of this section, the

court shall impose a fine of not more than one thousand dollars, one year imprisonment or both such fine and/or imprisonment.

(c) For the purposes of this section, an unlawful act of prostitution or a prostitution-related act shall include the following sections of this code, and any amendments thereto: 5.68.010 (prostitution), 5.68.020 (patronizing a prostitute), 5.68.030 (promoting prostitution), 5.68.110 (soliciting for immoral purposes), 5.68.170 (sodomy for hire), 5.68.180 (patronizing a person offering sodomy for hire), 5.68.190 (promoting sodomy for hire), 5.68.200 (sodomy), or 5.68.210 (loitering for the purpose of solicitation).

(d) If any subsection, clause or provision of this section is for any reason held illegal, invalid or unconstitutional, such action shall not affect the remaining provisions of this section which shall remain valid to the extent possible.”

SECTION 43. Section 5.72.010 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

“ **Interference with Law Enforcement.** (a) Interference with law enforcement is falsely reporting to a law enforcement officer or state investigative agency that a crime has been committed, knowing that such information is false and intending that the officer or agency acts in reliance or upon such information; or

(b) Knowingly obstructing, resisting or opposing any person authorized by law to serve process in the service or execution or in the attempt to

serve or execute any writ, warrant, process or order of a court, or in the discharge of any official duty.

(c) Violation—Penalty. Any person violating any provision of this section of the code is guilty of a misdemeanor and shall be punished by a fine of not more than two thousand five hundred dollars and/or an imprisonment of not more than one year and/or both such fine and imprisonment."

SECTION 44. Section 5.73.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Rioting.** (a) Riot is:

(1) five or more persons acting together without lawful authority engaging in any use of force or violence which produces a breach of the public peace, or

(2) any threat to use such force or violence against any person or property if accompanied by power or apparent power of immediate execution.

(b) Any person who violates the provisions of this section within the corporate limits of the city is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed two thousand five hundred dollars or by imprisonment for not more than one year or by both such fine and imprisonment."

SECTION 45. Section 5.75.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Interference with conduct of public business—Defined.** Interference with the conduct of public business in public buildings is:

(a) Conduct at or in any public building owned, operated or controlled by the city or any of its political subdivisions so as to knowingly deny to any public official, public employee, or any invitee on such premises, the lawful rights of such official, employee, or invitee to enter, to use the facilities, or to leave, any such public building; or

(b) Knowingly impeding any public official or employee in the lawful performance of duties or activities through the use of restraint, abduction, coercion, or intimidation or by force and violence or threat thereof; or

(c) Knowingly refusing or failing to leave any such public building upon being requested to do so by the chief administrative officer, or his designee, charged with maintaining order in such public building, if such person is committing, threatens to commit, or incites others to commit, any act which did or would if completed, disrupt, impair, interfere with, or obstruct the lawful missions, processes, procedures or functions being carried on in such public building; or

(d) Knowingly impeding, disrupting or hindering the normal proceedings of any meeting or session conducted by any judicial or legislative body or official at any public building by any act of intrusion into the chamber or other areas designated for the use of the body, or official conducting such meeting or session,

or by any act designed to intimidate, coerce or hinder any member of such body, or any official engaged in the performance of duties at such meeting or session; or

(e) Knowingly impeding, disrupting or hindering, by any act of intrusion into the chamber or other areas designed for the use of any executive body or official, the normal proceedings of such body or official.”

SECTION 46. Section 5.75.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Interference with conduct of public business—Misdemeanor.**

Interference with the conduct of public business in public buildings is a misdemeanor.

Upon conviction such person shall be punished by a fine not to exceed two thousand five hundred dollars (\$2,500.00) or one year imprisonment or both such fine and imprisonment.”

SECTION 47. Section 5.82.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Telephone service—Interfering with.** (a) It is unlawful for any person to use any telephone instrument, telephone equipment, telephone facilities or telefacsimile communication device for any of the following purposes:

(1) Knowingly make or transmit any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy or indecent; or

(2) Making a telephone call, whether or not conversation ensues, with intent to abuse, threaten or harass any person at the called number; or

(3) Making or causing the telephone of another repeatedly to ring or repeatedly transmit a telefacsimile communication with intent to harass any person at the called number; or

(4) Knowingly play any recording on a telephone, except recordings such as weather information or sports information when the number thereof is dialed unless the person or group playing the recording shall identify itself or himself or herself and state that it is a recording; or

(5) Knowingly permit any telephone or telefacsimile communication under one's control to be used in violation of this section.

(b) As used in this section 'telefacsimile communication' means the use of electronic equipment to send or transmit a copy of a document via telephone line.

(c) Any person who shall commit an act prohibited by this section shall be punished by a fine of not more than two thousand five hundred dollars or by one year imprisonment, or by both such fine and imprisonment."

SECTION 48. Section 5.85.010 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Unlawful Interference with a Firefighter.** Unlawful Interference with a firefighter is knowingly:



(a) Interfering with any firefighter while engaged in the performance of such firefighter's duties;

(b) Obstructing, interfering with or impeding the efforts of any firefighter to reach the location of a fire or other emergency; or

(c) Unlawful interference with a firefighter is a misdemeanor. Any person convicted of violating this section shall be sentenced to a term of imprisonment of not more than six months and/or a fine not to exceed one thousand dollars."

SECTION 49. Section 5.85.020 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Interference with Emergency Medical Services Personnel.**

(a) Unlawful interference with an emergency medical services attendant is knowingly:

(1) Interfering with any attendant while engaged in the performance of such attendant's duties; or

(2) Obstructing, interfering with or impeding the efforts of any attendant to reach the location of an emergency.

(b) Unlawful interference with an emergency medical services attendant is a misdemeanor. Any person convicted of violating this section shall be sentenced to a term of imprisonment of not more than six months and/or a fine not to exceed one thousand dollars."

SECTION 50. Section 5.88.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Unlawful discharge of a firearm, air rifles, pellet guns and BB guns.**

(a) It is unlawful for any person to discharge or fire any gun, pistol, air rifle, pellet gun, BB gun or any other firearm within the corporate limits of the city except at any properly licensed shooting gallery or upon a pistol range or at a gun club, either of which shall be approved by the chief of police.

(b) This section shall not apply to law enforcement officers while actually engaged in the performance of such officer's duty.

(c) This section shall not apply to health officers while actually engaged in the performance of such officer's duty.

(d) This section shall not apply to historical re-enactors and actors when engaged in performances and demonstrations when the powder charge does not exceed thirty grains for pistols, sixty-five grains for long guns and one-quarter pound for cannon, and the gun contains no projectile other than the minimum amount of wadding necessary to hold the powder charge in place. Provided, however, this subsection shall only apply to those performances and demonstrations which have been approved in advance in writing by the city manager or the city manager's designee.

(e) Any person who violates any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

(f) In addition to the penalty for the violation of this section, it shall be the duty of the municipal court judge to order any weapon seized in connection with such violation to be forfeited to the city and the same shall be disposed of by the chief of police pursuant to Section 5.88.010(11).”

SECTION 51. Section 5.88.030 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Air rifles, pellet guns and BB guns—Carrying within the city.**

(a) It is unlawful for any person to carry an air rifle, pellet gun or BB gun on the streets, alleys or public places within the corporate limits of the city unless the air rifle, pellet gun or BB gun is dismantled or in a scabbard.

(b) Any person who violates any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

(4) In addition to the penalty for the violation of this section, the municipal court judge may, in his or her discretion, order such air rifle, pellet gun or BB gun forfeited to the city and disposed of pursuant to Section 5.88.010(11).”

SECTION 52. The originals of Sections 5.01.020, 5.10.010, 5.10.020, 5.10.025, 5.10.035, 5.15.010, 5.24.010, 5.24.040, 5.26.020, 5.28.010, 5.30.020, 5.32.010, 5.36.030, 5.38.036, 5.42.010, 5.42.015, 5.42.020, 5.42.035, 5.42.060, 5.44.040, 5.66.010, 5.66.050, 5.68.020, 5.68.030, 5.68.110, 5.68.120, 5.68.140, 5.68.150, 5.68.155, 5.68.156, 5.68.170, 5.68.180, 5.68.190, 5.68.200, 5.68.215, 5.68.220, 5.72.010, 5.73.050, 5.75.010, 5.75.020, 5.82.010, 5.88.020 and 5.88.030 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 53. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once of a summary of the ordinance, once in the official city paper. Publication shall occur after July 1, 2012 and comply with the provisions of House Bill 2166 (2012).

PASSED by the governing body of the City of Wichita, Kansas, this 17<sup>th</sup> day of April, 2012.

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Carl Brewer, Mayor

ATTEST:

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Karen Sublett, City Clerk

Approved as to Form:

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Gary E. Rebenstorf  
Director of Law

DELINEATED

04/04/2012

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING SECTIONS 5.01.020, 5.10.010, 5.10.020, 5.10.025, 5.10.035, 5.15.010, 5.24.010, 5.24.040, 5.26.020, 5.28.010, 5.30.020, 5.32.010, 5.36.030, 5.38.036, 5.42.010, 5.42.015, 5.42.020, 5.42.035, 5.42.060, 5.44.040, 5.66.010, 5.66.050, 5.68.005, 5.68.020, 5.68.030, 5.68.110, 5.68.120, 5.68.140, 5.68.150, 5.68.155, 5.68.156, 5.68.170, 5.68.180, 5.68.190, 5.68.200, 5.68.215, 5.68.220, 5.72.010, 5.73.050, 5.75.010, 5.75.020, 5.82.010, 5.88.020 AND 5.88.030 CREATING SECTIONS 5.26.038, 5.26.039, 5.37.030, 5.42.005, 5.42.065, 5.85.010 AND 5.85.020 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO PUBLIC SAFETY AND MORALS AND REPEALING THE ORIGINALS OF SECTIONS 5.01.020, 5.10.010, 5.10.020, 5.10.025, 5.10.035, 5.15.010, 5.24.010, 5.24.040, 5.26.020, 5.28.010, 5.30.020, 5.32.010, 5.36.030, 5.38.036, 5.42.010, 5.42.015, 5.42.020, 5.42.035, 5.42.060, 5.44.040, 5.66.010, 5.66.050, 5.68.020, 5.68.030, 5.68.110, 5.68.120, 5.68.140, 5.68.150, 5.68.155, 5.68.156, 5.68.170, 5.68.180, 5.68.190, 5.68.200, 5.68.215, 5.68.220, 5.72.010, 5.73.050, 5.75.010, 5.75.020, 5.82.010, 5.88.020 AND 5.88.030 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 5.01.020 of the Code of the City of Wichita, Kansas, pertaining to ethnic intimidation, is hereby amended to read as follows:

**“Penalty.** ~~(a)~~ Upon a ~~first~~ conviction of a violation of the provisions of this chapter a person shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than two hundred fifty dollars nor more than two thousand five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

~~(b) On a second or subsequent conviction of a violation of the provisions of this chapter a person shall be deemed guilty of a misdemeanor and shall be sentenced to~~

~~imprisonment of not less than five days nor more than one year and a fine of not less than five hundred dollars nor more than two thousand five hundred dollars.”~~

SECTION 2. Section 5.10.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Assault deemed misdemeanor.** Any person who, within the corporate limits of the city, ~~intentionally~~ knowingly places another person in reasonable apprehension of immediate bodily harm, is guilty of a misdemeanor. No bodily contact is necessary.”

SECTION 3. Section 5.10.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Battery deemed misdemeanor.** (a) Any person who, within the corporate limits of the city, (1) ~~intentionally~~ knowingly or recklessly causes bodily harm to another person or (2) ~~intentionally~~ knowingly causes physical contact with another person when done in a rude, ~~insolent~~ insulting or angry manner, is guilty of a misdemeanor.

(b) Every person convicted under this section, shall be punished by fine of not more than one thousand dollars or one year imprisonment or both such fine and imprisonment; ~~however, upon a second or a subsequent conviction, the court shall impose a mandatory minimum jail sentence of five consecutive days and no person shall be eligible for probation or parole until serving the entire minimum sentence.~~

(c) ~~For the purposes of determining whether a conviction is a first, second, or subsequent conviction in sentencing under this section:~~

~~(1) 'Conviction' includes being convicted of a violation of this section or entering into a deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section.~~

~~(2) 'Conviction' includes being convicted of a violation of a law of this state or of another state or an ordinance of any municipality which prohibits the acts that this section prohibits or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such a law or ordinance.~~

~~(3) Only convictions occurring on or after the date the ordinance codified in this section becomes effective shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided.~~

~~(4) It is irrelevant whether an offense occurred before or after conviction for a previous offense."~~

SECTION 4. Section 5.10.025 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Domestic battery.** (a) Any person who, within the corporate limits of the city, (1) ~~intentionally~~ knowingly or recklessly causes bodily harm to a family or household member ~~or a domestic partner~~ or to an individual with whom the person is involved or has been involved in a dating relationship or (2) ~~intentionally~~ knowingly causes physical contact with a family or household member ~~or a domestic partner~~ to an individual with whom the person is involved

or has been involved in a dating relationship when done in a rude, ~~insolent~~ insulting or angry manner, is guilty of a misdemeanor.

(b) As used in subsection (a) of this section, "family or household member" means persons eighteen years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or who have lived together at any time. Family or household member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time.

(c) As used in subsection (a) of this section ~~"domestic partner"~~ 'dating relationship' means a ~~person who is, or who has in the past, been involved in an ongoing intimate relationship with the individual~~ social relationship of a romantic nature. In addition to any other factors the court deems relevant, the trier of fact may consider the following when making a determination of whether a relationship exists or existed: nature of the relationship, length of time the relationship existed, frequency of interaction between the parties and the time since termination of the relationship, if applicable.

(d) Upon a first conviction, a person shall be sentenced to not less than forty-eight consecutive hours nor more than six months' imprisonment and fined not less than two hundred dollars, nor more than five hundred dollars. In lieu of the mandatory sentence, the court, in its discretion, may enter an order which



requires the person to enroll in and successfully complete a court-approved domestic violence prevention program.

(e) Upon a second conviction within five years immediately preceding the commission of the crime, a person shall be sentenced to not less than ninety days nor more than one year's imprisonment and a fine of not less than five hundred dollars nor more than one thousand dollars. Upon a second conviction, the court shall impose a mandatory minimum jail sentence of five consecutive days and no person shall be eligible for probation or parole until serving the entire minimum sentence. The five days' imprisonment may be served in a work release or house arrest program only after such person has served forty-eight consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The offender shall serve at least five consecutive days imprisonment before the offender is granted probation, suspension or reduction of sentence. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a court-approved treatment program for domestic violence prevention.

(f) For the purposes of determining whether a conviction is a first, second, or subsequent conviction in sentencing under this section:

(1) 'Conviction' includes being convicted of a violation of this section, ~~or Section 5.10.020~~ or entering into a deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging violation of this section ~~or Section 5.10.020~~.

(2) 'Conviction' includes being convicted of a violation of a law of this state or of another state or an ordinance of any municipality which prohibits the acts that this section ~~or Section 5.10.020~~ prohibit or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such a law or ordinance;

(3) Only convictions occurring in the immediately preceding five years shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first or second offense, whichever is applicable;

~~(3)~~ (4) It is irrelevant whether an offense occurred before or after conviction for a previous offense.”

SECTION 5. Section 5.10.035 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Battery of a law enforcement officer.** (a) Any person who, within the corporate limits of the city;

(1) intentionally knowingly or recklessly causes bodily harm or

(2) knowingly causes physical contact with a uniformed or properly identified state, county or city law enforcement officer while such officer is engaged in the performance of such officer's duty, in a rude, ~~insolent~~ insulting or angry manner, is guilty of a misdemeanor.

(b) Every person convicted under this section, shall be punished by fine of not more than two thousand five hundred dollars or one year imprisonment

~~or both such fine and imprisonment; however, upon a second or a subsequent conviction, the court shall impose a mandatory minimum jail sentence of five consecutive days and no person shall be eligible for probation or parole until serving the entire minimum sentence.~~

~~(c) For the purposes of determining whether a conviction is a first, second, or subsequent conviction in sentencing under this section:~~

~~(1) 'Conviction' includes being convicted of a violation of this section or entering into a deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section.~~

~~(2) 'Conviction' includes being convicted of a violation of a law of this state or of another state or an ordinance of any municipality which prohibits the acts that this section prohibits or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such a law or ordinance.~~

~~(3) Only convictions occurring on or after the date the ordinance codified in this section becomes effective shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided.~~

~~(4) It is irrelevant whether an offense occurred before or after conviction for a previous offense."~~

SECTION 6. Section 5.15.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Victim or witness intimidation.** (a) Intimidation of a witness or victim is ~~knowingly and maliciously~~ preventing or dissuading, or attempting to prevent or dissuade with an intent to vex, annoy, harm or injure in any way another person or an intent to thwart or interfere in any manner with the orderly administration of justice:

(1) Any witness or victim from attending or giving testimony at any criminal trial, proceeding or inquiry authorized by law; or

(2) Any witness, victim or person acting on behalf of a victim from:

~~(A)~~ a. Making any report of the victimization of a victim to any law enforcement officer, prosecutor, probation officer, correctional officer, judicial officer or emergency communications dispatcher.

~~(B)~~ b. Causing a complaint to be sought and prosecuted, or causing a violation of probation or parole to be reported and prosecuted, and assisting in its prosecution.

~~(C)~~ c. Arresting or causing or seeking the arrest of any person in connection with the victimization of a victim.

(b) The following definitional sections shall apply to this section:

~~(1)~~ ~~"Malice" means an intent to vex, annoy, harm or injure in any way another person or intent to thwart or interfere in any manner with the orderly administration of justice;~~

~~(2)~~ (1) "Victim" means any individual against whom any crime under the laws of this state, this municipality or any municipality in this state, is being, has been or is attempted to be committed;

~~(3)~~ (2) "Witness" means any individual:

~~(A)~~ a. Who has knowledge of the existence or nonexistence of facts relating to any criminal trial, proceeding or inquiry authorized by law.

~~(B)~~ b. Whose declaration under oath is received or has been received as evidence for any purpose.

~~(C)~~ c. Who has reported any crime to any law enforcement officer, prosecutor, probation officer, parole officer, correctional officer, community correctional services officer or judicial officer, or any emergency communications dispatcher.

~~(D)~~ d. Who has been served with a subpoena issued under the authority of a municipal court or any court or agency of this state, or

~~(E)~~ e. Who would be believed by any reasonable person to be an individual described in this subsections ~~(3)(A), (B), (C) or (D) of this section.~~

(c) Intimidation of a victim or witness is a misdemeanor, and such sentence shall include a term of imprisonment of not more than six months and/or a one thousand dollar fine or both such fine and imprisonment.”

SECTION 7. Section 5.24.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Disorderly conduct.** Disorderly conduct is, ~~with knowledge or probable cause to believe that such acts~~ one or more of the following acts that the person knows or should know will alarm, anger or disturb others or provoke an assault or other breach of the peace:

- (a) Engaging in brawling or fighting; or
- (b) Disturbing an assembly, meeting, or procession, not unlawful in its character; or
- (c) Using ~~offensive, obscene, or abusive language~~ fighting words or engaging in noisy conduct tending to reasonably arouse alarm, anger or resentment in others.

As used in this section, ‘fighting words’ means words that by their very utterance inflict injury or tend to incite the listener to an immediate breach of peace.

Every person convicted of violating this section shall be punished by imprisonment of a term not to exceed thirty (30) days or a fine of not more than five hundred dollars (\$500.00) or both such imprisonment and fine.”

SECTION 8. Section 5.24.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Same—Penalty.** Unless otherwise specified, ~~✓~~violation of any of the provisions of this chapter constitutes a misdemeanor, and any violation thereof shall be punished by a fine of not more than five hundred dollars, or one year imprisonment, or by both such fine and imprisonment.”

SECTION 9. Section 5.26.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Unlawful acts regarding depressants, stimulants or other substances.**

Except as authorized by the Uniform Controlled Substances Act, K.S.A. 65-4101, et seq., no person shall possess or have under such person's control any of the following controlled substances or controlled substance analogs thereof:

(a) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(b) Any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(c) Any substance designated in subsection (g) of K.S.A. 65-4105, and amendments thereto, and designated in subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111 and amendments thereto; or

(d) Any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109 and amendments thereto;

(e) Any substance designated in K.S.A. 65-4113 and amendments thereto;

(f) Any substance designated in subsection (h) of K.S.A. 65-4105 and amendments thereto.”

SECTION 10. Section 5.26.038 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Distribution of Controlled Substance.** It shall be unlawful for any person to distribute or possess with the intent to distribute any controlled substance or a controlled substance analog designated in K.S.A. 65-4113 and amendments thereto to a person who is over the age of eighteen (18).”

SECTION 11. Section 5.26.039 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Unlawful Possession of a Simulated Controlled Substance.** It shall be unlawful for any person to use or possess with the intent to use a simulated controlled substance.”

SECTION 12. Section 5.28.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**Inhalation unlawful—Exceptions.** (A) Abusing toxic vapors is knowingly possessing, buying, using, smelling or inhaling the fumes of toxic



vapors with the intent of causing a condition of euphoria, excitement, exhilaration, stupefaction, or dulled senses of the nervous system, or to sell, give, or offer to sell or give to any other person any of the elements, compounds or combination of both elements and compounds as defined in subsection (D), if such person has knowledge that the product will be used in violation of this section.

(B) This subsection shall not apply to the inhalation of anesthesia or other substances for medical or dental purposes.

(C) Abusing toxic vapors is a misdemeanor, and such sentence shall include a term of imprisonment of not more than six months and/or a one thousand dollar fine. In addition to any sentence or fine imposed, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program as provided in K.S.A. 8-1008, and amendments thereto, or both the education and treatment programs.

(D) For the purposes of this section, the term "toxic vapors" means the following substances or products containing such substances:

- (1) Alcohols, including methyl, isopropyl, propyl or butyl;
- (2) Aliphatic acetates, including ethyl, methyl, propyl or methyl cellosolve acetate;
- (3) Acetone;
- (4) Benzene;
- (5) Carbon tetrachloride;

- (6) Cyclohexane;
- (7) Freons, including freon 11 and freon 12;
- (8) Hexane;
- (9) Methyl ethyl ketone;
- (10) Methyl isobutyl ketone;
- (11) Naphtha;
- (12) Perchlorethylene;
- (13) Toluene;
- (14) Trichloroethane; or
- (15) Xylene.

(E) In a prosecution for a violation of this section, evidence that a container lists one or more of the substances described in subsection (D) as one of its ingredients shall be prima facie evidence that the substance in such container contains toxic vapors and emits the fumes thereof.”

SECTION 13. Section 5.30/020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Report required.”**~~information to be shown. (a) Every physician who answers a call on an emergency case or who attends or administers to any patient that falls within the term of an emergency case as defined in the preceding section, and every hospital, hospital attendant or persons in charge thereof, who shall receive in their care, any patient in any emergency case shall immediately notify the police department of such case, giving the name and location of the patient and the nature of the injury.~~ Unlawful failure to report a wound is, with

no requirement of a culpable mental state, the failure by an attending physician or other person to report such person's treatment of any of the following wounds, to the office of the Chief of Police of the city or the office of the Sheriff of the county in which such treatment took place:

(1) Any bullet wound, gunshot wound, powder burn or other injury arising from or caused by the discharge of a firearm; or

(2) any wound which is likely to or may result in death and is apparently inflicted by a knife, ice pick or other sharp or pointed instrument.

(b) ~~If an examination, as provided for in K.S.A. 65-448(a) and amendments thereto, has taken place solely upon request of the victim, the medical care facility shall not notify the Wichita Police Department without the written consent of the victim, unless otherwise required by law.~~ Unlawful failure to report a wound is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500) and thirty (30) days imprisonment, or by both such fine and imprisonment.

(c) ~~There shall be no criminal liability for failing to comply with the provisions of subsection (b)."~~

SECTION 14. Section 5.32.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**~~"False calls for police assistance; false reports~~ Alarm.** (a) Any person who ~~gives or causes to be given~~ transmits in any manner to the Fire Department of any city or county a false call or alarm of fire, knowing at the time of such

transmission that there is no reasonable ground for believing that such fire exists.;

or

(b) Any person who makes a call in any manner for emergency service assistance including for police assistance, fire, medical or other emergency service, or who sends or causes to be sent to any police station or member of the police department any false call for assistance or whoever knowingly makes or causes to be made a false report of the commission of any crime to a member of the police department at the time of such call that there is no reasonable ground for believing such assistance is needed, is guilty of a misdemeanor.

(c) Any person convicted of giving a false alarm and any violation thereof shall be punished by a fine of not more than two thousand five hundred dollars (\$2,500) or one year imprisonment, or both such fine and imprisonment.”

SECTION 15. Section 5.36.030 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Permitting premises to be used for gambling.**

Permitting premises to be used for gambling is ~~intentionally~~ knowingly:

(a) Granting the use or allowing the continued use of a place as a gambling place; or

(b) Permitting another to set up a gambling device for use in a place under the offender's control.

(c) Anyone violating any of the provisions of this section shall be guilty of a misdemeanor and shall be punished as set forth in Section 5.36.050, and any amendments thereto.”

SECTION 16. Section 5.37.030 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Defacement or damage of property by graffiti.** Any person who writes, sprays, scratches or otherwise affixes graffiti upon any property, public or private, in which another has an interest and without the consent of such other person shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than two hundred fifty dollars (\$250.00) or more than one thousand dollars (\$1,000.00), or by imprisonment for not more than six (6) months, or by both such fine and imprisonment. In addition to such penalty the court may order the defendant to perform the necessary labor to clean up, repair, or replace the property damaged by that person, or to pay any costs incurred by the owner or the City of Wichita related to the cleanup, repair or replacement of property damaged by that person.”

SECTION 17. Section 5.38.036 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Fraud and cheating in obtaining accommodations.** (a) Any person who shall obtain food, lodging or other accommodations with a value of ~~one~~ two hundred ~~fifty~~ dollars or less, at any inn, restaurant, hotel, boarding house, apartment house, dwelling unit or rooming house by means of any trick, deception or false representation, statement or pretense, with intent to defraud the owner or keeper thereof, and shall fail or refuse to pay therefor, shall be deemed guilty of a misdemeanor.

(b) Any person convicted of violating Section 5.38.046 shall be punished by a fine not to exceed five hundred dollars (\$500) or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.”

SECTION 18. Section 5.42.005 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Definitions.** As used in this chapter, the following terms shall have the following meanings:

(a) ‘Deception’ means knowingly creating or reinforcing a false impression, including false impressions as to law, value, intention or other state of mind. Deception as to a person’s intention to perform a promise shall not be inferred from the fact alone that such person did not subsequently perform the promise. Falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive reasonable persons, is not deception.

(b) ‘Deprive permanently’ means to:

(1) Take from the owner the possession, use or benefit of property, without an intent to restore the same;

(2) retain property without intent to restore the same or with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

(3) sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner.

(c) ‘Obtain’ means to bring about a transfer of interest in or possession of property, whether to the offender or to another.

(d) ‘Obtains or exerts control’ over property includes, but is not limited to, the taking, carrying away, sale, conveyance, transfer of title to, interest in, or possession of property.

(e) ‘Owner’ means a person who has any interest in property;

(f) ‘Property’ means anything of value, tangible or intangible, real or personal;

(g) ‘Services’ means labor, professional services, cable television service, public or municipal utility or transportation service, telephone service, entertainment and the supplying of equipment for use.

(h) ‘Stolen property’ means property over which control has been obtained by theft.

(i) ‘Threat’ means a communicated intent to inflict physical or other harm on any person or on property.”

SECTION 19. Section 5.42.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Petit theft.** Petit theft is any of the following acts done with intent to deprive the owner permanently of the possession, use or benefit of his property:

(a) Obtaining or exerting unauthorized control over property or services having a value of less than one thousand dollars;

(b) Obtaining by deception control over property or services having a value of less than one thousand dollars;

(c) Obtaining by threat control over property or services having a value of less than one thousand dollars;

(d) Obtaining control over property or services having a value of less than one thousand dollars knowing the property to have been stolen by another.

Any person convicted of petit theft shall be deemed guilty of a misdemeanor, and shall be punished by a fine not to exceed two thousand five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment. In addition, whenever any person is convicted of petit theft, the court shall order such person to be fingerprinted and photographed immediately following such conviction unless such person has already been photographed and fingerprinted when charged with the specific offense which is the subject of such conviction.”

SECTION 20. Section 5.42.015 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Prima facie evidence of intent to permanently deprive owner or lessor of possession, use or benefit of property.** (a) In any prosecution under this title, the following shall be prima facie evidence of intent to permanently deprive the owner or lessor of property of the possession, use or benefit thereof:

(1) The giving of a false identification or fictitious name, address or place of employment at the time of obtaining control over the property;

(2) The failure of a person who leases or rents personal property to return the same within ten days after the date set forth in the lease or rental agreement for the return of the property, if notice is given to the person renting or leasing the property to return the property within



seven days after receipt of notice, in which case the subsequent return of the property within the seven-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section;

(3) Destroying, breaking or opening a lock, chain, key switch, enclosure or other device used to secure the property in order to obtain control over the property;

(4) Destruction of or substantially damaging or altering the property so as to make the property unusable or unrecognizable in order to obtain control over the property.

(5) The failure of a person who leases or rents from a commercial renter a motor vehicle under a written agreement that provides for the return of the motor vehicle to a particular place at a particular time, if notice has been given to the person renting or leasing the motor vehicle to return such vehicle within three calendar days from the date of the receipt or refusal of the demand. In addition, if such vehicle has not been returned after demand, the lessor may notify the local law enforcement agency of the failure of the lessee to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into any appropriate state and local computer system listing stolen motor vehicles;

(6) The failure of a person who is provided with a use of a vehicle by the owner of the vehicle to return it to the owner pursuant to a written instruction specifying:

(A) The time and place to return the vehicle; and

(B) That failure to comply may be prosecuted as theft, and such instructions are delivered to the person by the owner at the time the person is provided with possession of the vehicle. In addition, if such vehicle has not been returned pursuant to the specifications in such instructions, the owner may notify the local law enforcement agency of the failure of the person to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into any appropriate state and local computer system listing stolen motor vehicles;

(7) Removing a theft detection device, without authority, from merchandise or disabling such device prior to purchase; or

(8) The failure to replace or reattach the nozzle and hose of the pump used for the dispensing of motor fuels or placing such nozzle and hose on the ground or pavement.

(b) In any prosecution for a misdemeanor in which the object of the alleged theft is a book or other material borrowed from a library, it shall be prima facie evidence of intent to permanently deprive the owner of the possession, use or benefit thereof if the defendant failed to return such book or material within 30 days after receiving notice from the library requesting its return, in which case the subsequent return of the book or material within the 30-day period shall exempt

such transaction from consideration as prima facie evidence as provided in this section.

(c) In a prosecution for theft as defined in this chapter, and such theft is of services, the existence of any of the connections of meters, alterations or use of unauthorized or unmeasured electricity, natural gas, water, telephone service or cable television service, caused by tampering, shall be prima facie evidence of intent to commit theft of services by the person or persons using or receiving the direct benefits from the use of the electricity, natural gas, water, telephone service of cable television service passing through such connections or meters, or using the electricity, natural gas, water, telephone service or cable television service which has not been authorized or measured. Tampering includes, but is not limited to:

(1) Making a connection of any wire, conduit or device, to any service or transmission line owned by a public or municipal utility, or by a cable television service provider;

(2) Defacing, puncturing, removing, reversing or altering any meter or any connections, for the purpose of securing unauthorized or unmeasured electricity, natural gas, water, telephone service or cable television service;

(3) Preventing any such meters from properly measuring or registering;

(4) Knowingly taking, receiving, using or converging to such person's own use, or the use of another, any electricity, water or natural

gas which has not been measured; or any telephone or cable television service which has not been authorized; or

(5) Causing, procuring, permitting, aiding or abetting any person to do any of the preceding acts.

~~(b)~~ (d) The word "notice" as used herein shall be construed to mean notice in writing and such notice in writing will be presumed to have been given three days following deposit of the notice as registered or certified matter in the United States mail, addressed to such person who has leased or rented the personal property at the address as it appears in the information supplied by such person at the time of such leasing or renting, or to such person's last known address.”

SECTION 21. Section 5.42.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Giving a worthless check.** ~~(1)~~ (a) Giving a worthless check is the making, drawing, issuing, or delivering or causing or directing the making, drawing, issuing or delivering of any check, order or draft on any bank, credit union, savings and loan association or depository for the payment of money or its equivalent with intent to defraud and knowing, at the time of the making, drawing, issuing or delivering of such check, order or draft, that the maker or drawer has no deposit in or credits with the drawee or has not sufficient funds in, or credits with, the drawee for the payment of such check, order or draft in full upon its presentation.

~~(2)~~ (b) Subsection (1) of this section shall apply if the check, draft or order is drawn for less than one thousand dollars.

~~(3)~~ (c) In any prosecution against the maker or drawer of a check, order or draft, payment of which has been refused by the drawee on account of insufficient funds, the making, drawing, issuing or delivering of such check shall be prima facie evidence of intent to defraud and of knowledge of insufficient funds in, or on deposit with the drawee; ~~(a)~~ (1) unless the maker or drawer pays the holder thereof the amount due thereon and a service charge not exceeding thirty dollars for each check, within seven days after notice has been given to the maker or drawer that such check, draft or order has not been paid by the drawee; or ~~(b)~~ (2) if a postdated date is placed on the check, order or draft without the knowledge or consent of the payee.

(d) As used in this section, the word 'notice' shall have the following meaning:

(1) 'Notice' includes oral or written notice to the person entitled thereto. Written notice shall be presumed to have been given when deposited as restricted matter in the United States Mail, addressed to the person to be given notice at such person's address as it appears on such check, draft or order. Check is any check, order or draft on a financial institution. Financial institution means any bank, credit union, savings and loan association or depository.

~~(4)~~ (e) It shall not be a defense to a prosecution under this section that the check, draft or order upon which such prosecution is based:

~~(a)~~ (1) Was postdated, unless such check, draft or order was presented for payment prior to the posted date; or

~~(b)~~ (2) Was given to a payee who had knowledge or had been informed when the payee accepted such check, draft or order, that the maker did not have sufficient funds in the hands of the drawee to pay such check, draft or order upon presentation, unless such check, draft or order was presented for payment prior to the date the maker informed the payee there would be sufficient funds.

~~(5)~~ (f) Penalty. Any person convicted of giving a worthless check is guilty of a misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars or by imprisonment for not more than one year or by both such fine and imprisonment.”

SECTION 22. Section 5.42.035 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Unlawful use of a financial card.** ~~(4)~~ (a) Criminal use of a financial card is any of the following acts done with intent to defraud and for the purpose of obtaining money, goods, property, or services ~~or communication services~~.

~~(a)~~ (1) Using a financial card without the consent of the card holder; or

~~(b)~~ (2) Knowingly using a financial card, or the number or description thereof, which has been revoked or canceled; or

~~(c)~~ (3) Using a falsified, mutilated, altered or nonexistent financial card or a number or description thereof.

~~(2)~~ (b) For the purposes of this section:

~~(a)~~(1) 'Financial Card' means an identification card, plate, instrument, device, or number issued by a business organization authorizing the card holder to purchase, lease, or otherwise obtain money, goods, property, services or communication services or to conduct other financial transactions.

~~(b)~~(2) 'Card holder' means the person or entity to whom or for whose benefit a financial card is issued.

~~(c)~~(3) For the purposes of subsection ~~(1)(b)~~ (a)(2) hereof, a financial card shall be deemed canceled or revoked when notice in writing thereof has been received by the named holder thereof as shown on such financial card or by the records of the company.

~~(3)(c)~~ Penalty. Criminal use of a financial card is a misdemeanor if the money, goods, property, or services ~~or communication services~~ obtained within a seven-day period are of the value of less than one thousand dollars. Any person convicted of criminal use of a financial card shall be punished by a fine not to exceed two thousand five hundred dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment."

SECTION 23. Section 5.42.060 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Theft of lost or mislaid property.** Any person who fails to take reasonable measures to restore lost, ~~or~~ mislaid or property delivered to them by a mistake, to the owner, when the person has obtained control of such property, who knows or learns the identity of the owner thereof, and who intends to deprive

the owner permanently of the possession, use or benefit of such property, shall be deemed guilty of a misdemeanor, and any person convicted thereof shall be punished by a fine not to exceed two thousand five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.”

SECTION 24. Section 5.42.065 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Receiving stolen property.** (a) A person commits the crime of receiving stolen property, with a value of less than one thousand dollars, if for the purposes of depriving the owner of a lawful interest therein, he or she receives, retains or disposes of property of another knowing that it has been stolen, or believing that it has been stolen.

(b) Evidence of the following is admissible in any criminal prosecution pursuant to this section to prove the requisite knowledge or belief of the alleged receiver:

(1) That he or she was found in possession or control of other property stolen on separate occasions from two or more persons;

(2) That he or she received other stolen property in another transaction within the year preceding the transaction charged;

(3) That he or she acquired the stolen property for a consideration which he or she knew was far below its reasonable value;



(4) That he or she obtained control over stolen property knowing the property to have been stolen or under such circumstances as would reasonably induce a person to believe the property was stolen.”

SECTION 25. Section 5.44 040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Illegal dumping.** (a) It is unlawful to dump or cause to be dumped any wasted matter in or upon any public or private highway or road, including any portion of the right-of-way thereof, or in or upon any private property into or upon which the public is admitted by easement or license, or upon any private property without the consent of the owner, or in or upon any public park or other public property other than property designated or set aside for the purpose by the governing body having charge of that property.

(b) Any person violating this section is guilty of a misdemeanor. Each day that waste placed, deposited, or dumped in violation of this section remains is a separate violation.

(c) This section does not restrict a private owner in the use of his or her own private property, unless the placing, depositing, or dumping of the waste matter on the property creates a public health and safety hazard, a public nuisance, or a fire hazard, as determined by the health department.

(d) Whenever waste dumped in violation of this section is discovered to contain any article or articles, including but not limited to letters, bills, publications or other writings which display the name of a person thereon, addressed to such person or in any other manner indicating that the article belongs

or belonged to such person, it shall be a rebuttable presumption that such person has violated this chapter. Presumptions in this section may be overcome by proof that the person identified from the letter of other item caused the waste to be collected and transported for disposal at an approved site by a person licensed by the city to collect and dispose of solid waste.

(e) Any person convicted of a violation of this section shall be punished by a mandatory fine of not less than two hundred fifty dollars nor more than one thousand dollars upon a first conviction, or by imprisonment for not more than twelve months, or by both such fine and imprisonment. Upon a second or subsequent conviction by a mandatory fine of not less than ~~five hundred~~ one thousand dollars nor more than ~~one~~ two thousand dollars or by imprisonment for not more than twelve months, or by both such fine and imprisonment. If upon the trial of any person found guilty of a misdemeanor hereunder, it shall appear to the court that the violation complained of is continuing, the court shall enter such order as it shall deem appropriate to cause the violation to be abated.

(f) The court may require, in addition to any fine imposed upon a conviction, that, as a condition of probation and in addition to any other condition of probation a person convicted under this section remove, or pay the cost of removing, any waste matter which the convicted person dumped or caused to be dumped upon public or private property.

(g) Except when the court requires the convicted person to remove waste matter which he or she is responsible for dumping as a condition of probation, the court may, in addition to the fine imposed upon a conviction,

require as a condition of probation, in addition to any other conditions of probation, that any person convicted of a violation of this section pick up waste matter at a time and place within the jurisdiction of the court for not less than twelve hours.

(h) Any person who places, deposits, or dumps, or causes to be placed, deposited, or dumped, waste matter in violation of this section in bulk quantities, tires, furniture, or appliances shall be guilty of a misdemeanor, and upon a first conviction thereof shall be punished by a fine of not less than five hundred dollars or more than one thousand dollars, or by imprisonment for not more than twelve months, or by both such fine and imprisonment. Upon a second or subsequent conviction shall be punished by a fine of not less than one thousand dollars nor more than two thousand dollars, or by imprisonment for not more than twelve months, or by both such fine and imprisonment. ~~Upon a second or subsequent conviction of this subsection, the person convicted must serve at least five consecutive days imprisonment before the person is granted probation suspension or reduction of sentence or parole or is otherwise released.~~ If upon trial of any person found guilty of a misdemeanor hereunder, it shall appear to the court that the violation complained of is continuing, the court shall enter such order as it shall deem appropriate to cause the violation to be abated.

(i) Except in unusual cases where the interests of justice would be best served by waiving or reducing the fine, the minimum fines provided by this section shall not be waived or reduced. Except that the court may order that the defendant perform community service specified by the court in lieu of the

mandatory fines imposed, but such an order shall be entered only after the court has required the defendant to file an affidavit of such defendant's financial condition as required by Section 1.04.210(e) and amendments thereto, and the court has found from the information contained in the affidavit that the defendant is financially unable to pay the fines imposed."

SECTION 26. Section 5.66.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Criminal damage to property.** ~~(1)(a)~~ Criminal damage to property is by means other than by fire or explosive:

~~(a)(1)~~ ~~Intentionally injuring,~~ Knowingly damaging, mutilating, defacing, destroying, or substantially impairing the use of any property, in which another has an interest without the consent of such other person; or

~~(b)(2)~~ ~~Injuring,~~ damaging, mutilating, defacing, destroying or substantially impairing the use of any property, with intent to injure or defraud an insurer or lienholder.

~~(2)~~ (b) Criminal damage to property is a misdemeanor if the property damaged is of a value of less than one thousand dollars, or is of the value of one thousand dollars or more and is damaged to the extent of less than one thousand dollars.

~~(3)~~ (c) Penalty. Any person who is convicted of criminal damage to property shall be deemed guilty of a misdemeanor and shall be punished by a fine not to exceed two thousand five hundred dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment."

SECTION 27. Section 5.66.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Criminal trespass.** Criminal trespass is entering or remaining upon or in any land, structure, vehicle, aircraft or watercraft by a person who knows he/she is not authorized or privileged to do so, and:

(a) Such person enters or remains therein in defiance of an order not to enter or to leave such premises on property personally communicated to such person by the owner thereof or other authorized person; or

(b) Such premises or property are posted in a manner reasonably likely to come to the attention of intruders, or are locked or fenced or otherwise enclosed, or shut or secured against passage or entries; or

(c) Such person enters or remains therein in defiance of a restraining order issued pursuant to ~~section 5, section 6 of SB 474~~, K.S.A. 60-1607, 60-3105, 60-3106, 60-3107, ~~K.S.A. 38-1542, 38-1543, or 38-1563~~, and any amendments to said statutory sections, and the restraining order has been personally served upon the person so restrained.

(d) Entering or remaining upon or in any public or private land or structure in a manner that interferes with access to or from any health care facility by a person who knows such person is not authorized or privileged to do so and such person enters or remains thereon or therein in defiance of an order not to enter or to leave such land or structure personally communicated to such person by the owner.

(1) As used in this section:

(A) 'Health care facility'" means any licensed medical care facility, certificated health maintenance organization, licensed mental health center, or mental health clinic, licensed psychiatric hospital or other facility or office where services of a health care provider are provided directly to patients.

(B) 'Health care provider' means any person: (1) Licensed to practice a branch of the healing arts; (2) licensed to practice psychology; (3) licensed to practice professional or practical nursing; (4) licensed to practice dentistry; (5) licensed to practice optometry; (6) licensed to practice pharmacy; (7) registered to practice podiatry; (8) licensed as a social worker; or (9) registered to practice physical therapy.

(e) Any person who commits a criminal trespass with the corporate limits of the city of Wichita shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or imprisonment which shall not exceed six months, or by both such fine and imprisonment.

(f) Upon conviction of subsection (c) of this section, a person shall be sentenced to not less than forty-eight consecutive hours of imprisonment which must be served either before or as a condition of any grant of probation, suspension or reduction of sentence. Such imprisonment may be served in work release or house arrest."

SECTION 28. Section 5.66.055 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Interference with the conduct of a lawful business.** (a) Interference with the conduct of a lawful business is:

(1) ~~Intentional~~ Conduct at or in any building owned, operated or controlled by a private individual or corporation that knowingly causes an obstruction to or interference with the free and uninterrupted use of such property as a lawful business by any employee, patron, patient or other invitee on such premises, or which prevents the free and uninterrupted ingress, egress or regress therein, thereon or thereto;

(2) ~~Wilfully or intentionally~~ Knowingly refusing or failing to leave any such building owned, operated or controlled by a private individual or corporation upon being requested to do so by the owner thereof, any law enforcement officer or other authorized individual.

(b) Any person who violates any of the provisions of this chapter within the corporate limits of the city shall be deemed guilty of a misdemeanor and upon conviction hereof shall be punished by the following fines:

(1) Upon a first conviction, not more than two thousand five hundred dollars:

(2) Upon a second conviction, not less than two hundred fifty dollars nor more than two thousand five hundred dollars;

(3) Upon a third conviction, not less than five hundred dollars nor more than two thousand five hundred dollars;

(4) Upon a fourth conviction, not less than seven hundred fifty dollars nor more than two thousand five hundred dollars;

(5) Upon a fifth conviction, not less than one thousand dollars; nor more than two thousand five hundred dollars;

(6) Upon a sixth conviction, not less than one thousand two hundred fifty dollars nor more than two thousand five hundred dollars;

(7) Upon a seventh conviction, not less than one thousand five hundred dollars nor more than two thousand five hundred dollars;

(8) Upon a eighth conviction, not less than one thousand seven hundred fifty dollars nor more than two thousand five hundred dollars;

(9) Upon a ninth conviction, not less than two thousand dollars nor more than two thousand five hundred dollars;

(10) Upon a tenth conviction, not less than two thousand two hundred fifty dollars nor more than two thousand five hundred dollars;

(11) And upon an eleventh or subsequent conviction, not less than two thousand five hundred dollars.

In addition to the preceding fines such person may be punished by a term of imprisonment which shall not exceed six months, or by both such fines and imprisonment.

(c) The imposition of the fines established in subparagraphs (b)(2) through (11) herein shall be mandatory and the court shall not waive, remit, suspend, parole or otherwise excuse the payment thereof except that the court may order that the defendant perform community service specified by the court



but such an order shall be entered only after the court has required the defendant to file an affidavit of such defendant's financial condition as required by Section 1.04.210(e) and amendments thereto, and the court has found from the information contained in the affidavit that the defendant is financially unable to pay the fines imposed herein.

(d) For the purposes of determining whether a conviction is a first or subsequent conviction in sentencing under this section, conviction includes being convicted of a violation of this section, and it is irrelevant whether an offense occurred before or after conviction for a previous offense.”

SECTION 29. Section 5.68.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Patronizing a prostitute.** Any person who patronizes a prostitute is guilty of a misdemeanor. For purposes of this chapter, "patronizing a prostitute" shall mean:

(a) Knowingly entering or remaining in a house of prostitution with the intent to engage in sexual intercourse or any unlawful sexual acts with a prostitute; or

(b) Knowingly hiring a prostitute to engage in sexual intercourse or any unlawful sexual act;

(c) Every person convicted under this section (5.68.020), shall be punished by a fine of not more than five hundred dollars or six months imprisonment or both such fine and imprisonment; ~~however, upon a second or a subsequent conviction, the court shall impose a mandatory minimum jail sentence~~

~~of five consecutive days and no person shall be eligible for probation or parole until serving the entire minimum sentence.~~

~~(1) For the purposes of determining whether a conviction is a first, second, or subsequent conviction in sentencing under this section:~~

~~(A) "Conviction" includes being convicted of a violation of this section.~~

~~(B) "Conviction" includes being convicted of a violation of a law of this state or of another state or an ordinance of any municipality which prohibits the acts that this section prohibits.~~

~~(C) Only convictions occurring on or after the date the ordinance codified in this section becomes effective shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided.~~

~~(D) It is irrelevant whether an offense occurred before or after conviction for a previous offense."~~

SECTION 30. Section 5.68.030 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Promoting prostitution.** ~~(1)~~ (a) Any persons who knowingly ~~committing~~ any of the following acts when the prostitute is sixteen or more years of age, shall be deemed guilty of a misdemeanor.

~~(a)~~ (1) Establishing, owning, maintaining or managing a house of prostitution, or participating in the establishment, ownership, maintenance or management thereof;

~~(b)~~ (2) Permitting any place partially or wholly owned or controlled by the defendant to be used as a house of prostitution;

~~(c)~~ (3) Procuring a prostitute for a house of prostitution;

~~(d)~~ (4) Inducing another to become a prostitute;

~~(e)~~ (5) Soliciting a patron for a prostitute or for a house of prostitution;

~~(f)~~ (6) Procuring a prostitute for a patron;

~~(g)~~ (7) Procuring transportation for, paying for the transportation of or transporting a person within the state with the intention of assisting or promoting that person's engaging in prostitution; or

~~(h)~~ (8) Being employed to perform any act which is prohibited by this section.

~~(2)~~ (b) Every person convicted under this section (5.68.030) shall be punished by a fine of not more than five hundred dollars or six months imprisonment or both such fine and imprisonment; ~~however, upon a second or a subsequent conviction, the court shall impose a mandatory minimum jail sentence of five consecutive days and no person shall be eligible for probation or parole until serving the entire minimum sentence.~~

~~(a) For the purposes of determining whether a conviction is a first, second, or subsequent conviction in sentencing under this section:~~

~~(1) 'Conviction' includes being convicted of a violation of this section.~~

~~(2) 'Conviction' includes being convicted of a violation of a law of this state or of another state or an ordinance of any municipality which prohibits the acts that this section prohibits.~~

~~(3) Only convictions occurring on or after the date the ordinance codified in this section becomes effective shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided.~~

~~(4) It is irrelevant whether an offense occurred before or after conviction for a previous offense."~~

SECTION 31. Section 5.68.110 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Soliciting for immoral purposes. (1) (a)** It is unlawful to solicit any person upon the streets or in public places within the corporate limits of the city, to engage in an act of prostitution, sodomy or sodomy for hire.

~~(2) (b)~~ For the purposes of this section, the following terms shall have the meanings respectively ascribed to them:

~~(a) (1)~~ "Public place" is any place to which the general public has access and a right to resort for business, entertainment or other lawful purpose, but does not necessarily mean a place devoted solely to the uses of the public. Such term also includes the front or immediate area of any store, shop, restaurant, tavern or other place of business and all public grounds, areas and parks.

~~(b) (2)~~ "Prostitution" is sexual intercourse for hire.

~~(e)~~ (3) "Sodomy" is oral or anal copulation between persons who are not husband and wife or consenting adult members of the opposite sex, or between a person and an animal, or coitus with an animal.

~~(d)~~ (4) "Sodomy for hire" is an act of oral or anal copulation for hire.

~~(3)~~ (c) Any person violating the provisions of this section (5.68.110) shall be deemed guilty of a misdemeanor, and any person convicted thereof shall be punished by a fine of not more than five hundred dollars or six months imprisonment or by both such fine and imprisonment; ~~however, upon a second or a subsequent conviction under this section, the court shall impose a mandatory minimum jail sentence of five consecutive days and no person shall be eligible for probation or parole until serving the entire minimum sentence.~~

~~(a) For the purposes of determining whether a conviction is a first, second, or subsequent conviction in sentencing under this section:~~

~~(1) "Conviction" includes being convicted of a violation of this section.~~

~~(2) "Conviction" includes being convicted of a violation of a law of this state or of another state or an ordinance of any municipality which prohibits the acts that this section prohibits.~~

~~(3) Only convictions occurring on or after the date this ordinance becomes effective shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided.~~

(4) ~~It is irrelevant whether an offense occurred before or after conviction for a previous offense.”~~

SECTION 32. Section 5.68.120 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Adultery.** Adultery is sexual intercourse or sodomy by a person with another who is not his spouse if (a) such person is married; or (b) such person is not married and knows that the other involved in such intercourse is married; ~~and~~ ~~a~~Any person who shall be deemed guilty of adultery shall be guilty of a misdemeanor, and any person convicted thereof shall be punished ~~in accordance with Section 1.04.060 of this Code~~ by a fine not to exceed five hundred dollars and/or imprisonment of thirty days or both such fine and/or imprisonment.”

SECTION 33. Section 5.68.140 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Lewd and lascivious behavior.** Lewd and lascivious behavior is:

(a) Publicly engaging in otherwise lawful sexual intercourse or sodomy with any person or animal with knowledge or reasonable anticipation that the participants are being viewed by others who are sixteen or more years of age; or

(b) Publicly exposing a sex organ or exposing a sex organ in the presence of a person who is sixteen or more years of age, ~~who~~ is not the spouse of the offender and who has not consented thereto, with intent to arouse or gratify the sexual desires of the offender or another.

Any person committing lewd and lascivious behavior shall be deemed guilty of a misdemeanor, and any person convicted thereof shall be punished by a fine of not more than five hundred dollars or six months; imprisonment, or both such fine and imprisonment.”

SECTION 34. Section 5.68.150 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Promoting obscenity unlawful—Definitions—Evidence—Defense to prosecution—Exceptions—Penalty.**

~~(1)~~ (a) It is declared to be unlawful to promote obscenity or to promote obscenity to minors. Promoting obscenity is ~~knowingly or~~ recklessly:

~~(a)~~ (1) Manufacturing, ~~issuing,~~ selling, giving, providing, lending, mailing, delivering, transmitting, publishing, distributing, circulating, disseminating, presenting, exhibiting or advertising any obscene material or obscene device; or

~~(b)~~ (2) Possessing any obscene material or obscene device with intent to ~~issue,~~ sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise such material or obscene device; or

~~(c)~~ (3) Offering or agreeing to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise any obscene material; or

~~(d)~~ (4) Producing, presenting or directing an obscene performance or participating in a portion thereof which is obscene or which contributes to its obscenity.

~~(2)~~ (b) Evidence that materials or devices were promoted to emphasize their prurient appeal or sexual provocative aspect shall be relevant in determining the question of the obscenity of such materials or devices. There shall be a presumption that a person promoting obscene materials or obscene devices did so ~~knowingly or~~ recklessly if:

~~(a)~~ (1) The materials or devices were promoted to emphasize their prurient appeal ~~or sexually provocative aspect~~; or

~~(b)~~ (2) The person is not a wholesaler and promotes the materials or devices in the course of the person's business.

~~(3)~~ (c) ~~(a)~~ (1) Any material or performance is "obscene" if:

~~(i)~~ a. The average person applying contemporary community standards would find that the material or performance, taken as a whole, appeals to the prurient interest;

~~(ii)~~ b. The average person applying contemporary community standards would find that the material or performance has patently offensive representations or descriptions of (A) ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse or sodomy, or (B) masturbation, excretory functions, sadomasochistic abuse or lewd exhibition of the genitals; and



~~(iii)~~ c. Taken as a whole, a reasonable person would find that the material, or performance, lacks serious literary, educational, artistic, political or scientific value.

~~(b)~~ (2) 'Material' means any tangible thing which is capable of being used or adopted to arouse interest, whether through the medium of reading, observation, sound or other manner.

(3) 'Obscene device' means a device, including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs, except such devices disseminated or promoted for the purpose of medical or psychological therapy.

~~(c)~~ (4) 'Performance' means any play, motion picture, dance or other exhibition performed before an audience.

~~(d)~~ (5) 'Sexual intercourse' and 'sodomy' have the meanings provided by K.S.A. 21-3501-5501 and amendments thereto.

~~(e)~~ (6) 'Wholesaler' means a person who sells, distributes or offers for sale or distribution obscene materials only for resale and not to the consumer and who does not manufacture, publish or produce such materials or devices.

~~(4)~~ (d) It is a defense to a prosecution for obscenity that:

~~(a)~~ (1) The persons to whom the allegedly obscene material or obscene device was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific,

educational or governmental justification for possessing or viewing the same.

~~(b)~~ (2) The defendant is an officer, director, trustee or employee of a public library and the allegedly obscene material was acquired by such library and was disseminated in accordance with regular library policies approved by its governing body; or

~~(c)~~ (3) The allegedly obscene material or obscene device was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incident to an approved course or program of instruction at such school.

~~(5)~~ (e) The provisions of this section which prescribe a criminal penalty for exhibit of any obscene motion picture shown in a commercial showing to the general public shall not apply to a projectionist, or assistant projectionist, if such projectionist or assistant projectionist has no financial interest in the show or in its place of presentation other than regular employment as a projectionist or assistant projectionist and no personal knowledge of the contents of the motion picture. The provisions of this section shall not exempt any projectionist or assistant projectionist from criminal liability for any act unrelated to projection of motion pictures in commercial showings to the general public.

~~(6)~~ (f) Promoting obscenity is declared to be a misdemeanor punishable upon conviction by a fine of not more than two thousand five hundred dollars, or

by imprisonment in the city jail for a period of not exceeding one year, or both such fine and imprisonment. ~~Upon conviction for the second such offense committed within two years after conviction for the first offense, a fine shall be imposed in an amount not less than two thousand five hundred dollars nor more than five thousand dollars in addition to or instead of any confinement.~~

~~(7)~~ (g) Upon any conviction for promoting obscenity, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter into a reasonable recognizance with good and sufficient surety, in such sum as the court may direct, but not to exceed fifty thousand dollars, conditioned to the effect that in the event the defendant is convicted of a subsequent offense of promoting obscenity within two years after such conviction, he shall forfeit the recognizance.”

SECTION 35. Section 5.68.155 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**~~“Promoting obscenity to minors—Defined—Defense to prosecution—~~**

**Penalty.** ~~(4)~~ (a) Promoting obscenity to minors is promoting obscenity where the recipient of the obscene material, device, or a member of the audience of an obscene performance is a child under the age of eighteen years. Any material, device or performance is ‘obscene’ if the average person applying contemporary community standards would find that such material or performance, taken as a whole, appeals to the prurient interest; that the material, device or performance has patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, and that the material, device or performance,

taken as a whole, lacks serious literary, educational, artistic, political or scientific value.

~~(2)~~ (b) Notwithstanding the provisions of ~~K.S.A. 1969 Supp. 21-3202~~ K.S.A. 21-5204, to the contrary, it shall be an affirmative defense to any prosecution under this section that:

~~(a)~~ (1) The defendant had reasonable cause to believe that the minor involved was eighteen years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was eighteen years old or more; or

~~(b)~~ (2) ~~The allegedly obscene material was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incident to an approved course or program of instruction at such school~~ An exhibition in a state of nudity is for a bona fide scientific or medical purpose or for an educational or cultural purpose for a bona fide school, museum or library.

~~(3)~~ (c) Promoting obscenity to minors is a misdemeanor, ~~for the first offense, with a mandatory fine of not less than two thousand five hundred dollars nor more than five thousand dollars in addition to or instead of any imprisonment imposed upon conviction~~ punishable upon conviction by a fine of not more than

two thousand five hundred dollars, or by imprisonment in the city jail for a period of not exceeding one year, or both such fine and imprisonment.

~~(4)~~ (d) Upon any conviction for promoting obscenity to minors, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter into a reasonable recognizance with good and sufficient surety, in such sum as the court may direct, but not to exceed fifty thousand dollars, conditioned to the effect that in the event the defendant is convicted of a subsequent offense of promoting obscenity to minors within two years after such conviction, he shall forfeit the recognizance.”

SECTION 36. Section 5.68.156 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Displaying material harmful to minors. ~~(4)~~ (a) Definitions.**

(1) ‘Blinder Rack’ means a device in which material is displayed in a manner that the lower two-thirds (2/3) of the material is not exposed to view;

~~(4)~~ (2) ‘Harmful to minors’ means that quality of any description, exhibition, presentation or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sadomasochistic abuse when the material or performance, taken as a whole or with respect to a prosecution for an act described by subsection (2)(a) of this section, that portion of the material that was actually exposed to the view of minors, has the following characteristics:

~~(1)~~ a. The average adult person applying contemporary community standards would find that the material, device or performance has a predominant tendency to appeal to a prurient interest in sex to minors; and

~~(2)~~ b. The average adult person applying contemporary community standards would find that the material, device or performance depicts or describes nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and

~~(3)~~ (c) A reasonable person would find that the material, device or performance lacks serious literary, scientific, educational, artistic or political value for minors.

~~(b) — "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:~~

~~(1) — The character and content of any material or performance which is reasonably susceptible of examination by the defendant; and~~

~~(2) — The age of the minor; however, an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.~~

(e) (3) 'Material' means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, or recording tape, video tape.

(d) (4) 'Minor' means any unmarried person under the age of eighteen years.

(e) (5) 'Nudity' means the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering; the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a ~~discernibly~~ discernible ~~turgid~~ state of sexual excitement:-

(f) (6) 'Performance' means any motion picture, film, video tape, played record, phonograph, or tape recording, preview, trailer, play, show, skit, dance or other exhibition performed or presented to or before an audience of one or more, with or without consideration.

(g) (7) 'Person' means any individual, partnership, association, corporation, or other legal entity of any kind.

(h) (8) A 'reasonable bona fide attempt' means an attempt to ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate or other governmental or educational identification card or paper and not relying solely on the oral allegations or apparent age of the minor.

~~(i)~~ (9) 'Sadomasochistic abuse' means flagellation or torture by or upon a person clad in undergarments, mask or bizarre costume, or in the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

~~(j)~~ (10) 'Sexual conduct' means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, ~~if such person be a~~ female's, breast.

~~(k)~~ (11) 'Sexual excitement' means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

~~(2)~~ (b) Offenses. No person having custody, control or supervision of any commercial establishment shall knowingly:

~~(a)~~ (1) Display any material which is harmful to minors in such a way that minors, as a part of the invited general public, will be exposed to view such material or device; provided, however, a person shall be deemed not to have "displayed" material harmful to minors if the material is kept behind devices commonly known as "blinder racks" so that the lower two-thirds of the material is not exposed to view;

~~(b)~~ (2) Sell, furnish, present, distribute, allow to view, or otherwise disseminate to a minor, with or without consideration, any material or device which is harmful to minors; or



~~(e)~~ (3) Present to a minor or participate in presenting to a minor, with or without consideration, any performance which is harmful to a minor.

~~(3)~~ (c) Defenses. It shall be an affirmative defense to any prosecution under this section that:

~~(a)~~ (1) The allegedly harmful material or device was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incidental to an approved course or program of instruction at such school.

~~(b)~~ (2) The defendant is an officer, director, trustee or employee of a public library and the allegedly harmful material or device was acquired by a public library and was disseminated in accordance with regular library policies approved by its governing body.

~~(e)~~ (3) An exhibition in a state of nudity is for a bona fide scientific or medical purpose, or for an educational or cultural purpose for a bona fide school, museum or library.

~~(d)~~ (4) With respect to a prosecution for an act described by subsection ~~(2)~~~~(e)~~ (b)(1) of this section, the allegedly harmful material was kept behind blinder racks.

~~(e)~~ (5) With respect to a prosecution for an act described by subsection ~~(2)(b)~~ (b)(1) or ~~(e)~~ (b)(2) of this section, the defendant had reasonable cause to believe that the minor involved was eighteen years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was eighteen years old or more.

~~(f)~~ (6) With respect to a prosecution for an act described by subsection ~~(2)(e)~~ (b)(3) of this section, the allegedly harmful performance was viewed by the minor in the presence of such minor's parent or parents or such minor's legal guardian.

~~(4)~~ (d) The provisions of Section 5.68.156 shall not apply to a retail sales clerk, if such clerk has no financial interest in the materials or performance or in the commercial establishment displaying or selling, furnishing, presenting such performance other than regular employment as a retail sales clerk. The provisions of this section shall not exempt any retail sales clerk from criminal liability for any act unrelated to regular employment as a retail sales clerk.

~~(5)~~ (e) If any provision or clause of this Section 5.68.156 or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the section act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

~~(6)~~ (f) Penalties. Any person who shall be convicted of violating any provision of this section is guilty of a misdemeanor and shall be fined a sum not exceeding ~~five hundred~~ one thousand dollars and may be confined in jail for a definite term which shall be fixed by the court and shall not exceed ~~one~~ six months. Each day that any violation of this section occurs or continues shall constitute a separate offense and shall be punishable as a separate violation. Every act, thing or transaction prohibited by this section shall constitute a separate offense as to each item, issue or title involved and shall be punishable as such. For the purpose of this section, multiple copies of the same identical title, monthly issue, volume and number issue or other such identical material shall constitute a single offense.”

SECTION 37. Section 5.68.170 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Sodomy for hire.** (a) Any person who commits sodomy for hire is guilty of a misdemeanor.

(b) For purposes of this section, "sodomy for hire" is defined as performing, or offering or agreeing to perform an act of oral copulation or anal copulation for hire.

(c) Every person convicted under this section (5.68.170), shall be punished by a fine of not more than five hundred dollars or six months' imprisonment or both such fine and imprisonment; ~~however, upon a second or a subsequent conviction, the court shall impose a mandatory minimum jail sentence~~

~~of five days and no person shall be eligible for probation or parole until serving the entire minimum sentence.”~~

SECTION 38. Section 5.68.180 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Patronizing a person offering sodomy for hire.** (a) Any person who patronizes a person offering sodomy for hire, as defined in Section 5.68.170, is guilty of a misdemeanor.

(b) For purposes of this section, "patronizing a person offering sodomy for hire" means knowingly hiring a person to engage in oral copulation or anal copulation.

(c) Every person convicted under this section (5.68.180), shall be punished by a fine of not more than five hundred dollars or six months' imprisonment or both such fine and imprisonment; ~~however, upon a second or a subsequent conviction, the court shall impose a mandatory minimum jail sentence of five days and no person shall be eligible for probation or parole until serving the entire minimum sentence.”~~

SECTION 39. Section 5.68.190 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Promoting sodomy for hire.** (a) Any person committing any of the following acts shall be deemed guilty of a misdemeanor:

(1) Establishing, owning, maintaining or managing a place where sodomy for hire is committed or participating in the establishment, ownership, maintenance or management thereof;

(2) Permitting any place partially or wholly owned or controlled by the defendant to be used as a place where sodomy for hire is committed;

(3) Procuring or inducing another to engage in sodomy for hire;

(4) Soliciting a patron for a person offering sodomy for hire;

(5) Procuring transportation for, paying for the transportation of or transporting a person within the city with the intention of assisting or promoting that person's engaging in sodomy for hire;

(6) Being employed to perform any act which is prohibited by this section.

(b) For purposes of this section, "sodomy for hire" is defined as performing, or offering or agreeing to perform, an act of oral copulation or anal copulation for hire.

(c) Every person convicted under this section (5.68.190), shall be punished by a fine of not more than five hundred dollars or six months' imprisonment or both such fine and imprisonment; ~~however, upon a second or a subsequent conviction, the court shall impose a mandatory minimum jail sentence of five days and no person shall be eligible for probation or parole until serving the entire minimum sentence."~~

SECTION 40. Section 5.68.200 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Sodomy.**    ~~(a)~~   Any person who commits sodomy (1) with another person who is sixteen or more years of age and members of the same sex, or (2) with an animal, is guilty of a misdemeanor.

~~(a)   For purposes of this section, 'sodomy' is oral or anal copulation between persons who are sixteen or more years of age and members of the same sex, or between a person and an animal, or coitus with an animal. Any penetration, however slight, is sufficient to complete the crime of sodomy.~~

(b)   Every person convicted under this section shall be punished by a fine of not more than five hundred dollars, or by confinement for a period of six months, or by both such fine and imprisonment.”

SECTION 41. Section 5.68.220 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Sexual battery.**    ~~(1)~~ ~~(a)~~ Sexual battery is the ~~unlawful, intentional~~ touching of ~~the person of another~~ a victim who is sixteen or more years of age, who is not the spouse of the offender and who does not consent thereto, with the intent to arouse or satisfy the sexual desires of the offender or another.

~~(2)~~ ~~(b)~~ Any person who violates the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than two thousand five hundred dollars or twelve months imprisonment or by both such fine and imprisonment.”

SECTION 42. Section 5.68.215 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Anti-prostitution emphasis area—Enhanced penalties.**

(a) The following described area of the city is designated to be an anti-prostitution emphasis area:

(1) An area bounded to the north at Twenty-First Street, on the east by Washington, on the south by Second Street, and on the west by Main Street, which becomes Park Place, which encompasses all areas within those parameters, including the property on both sides of each of the boundary streets.

(2) An area bounded to the north at Waterman, on the east by Washington, on the south by Forty-Seventh Street South, and to the west by Wichita, which encompasses all areas within those parameters, including the property on both sides of each of the boundary streets.

(3) An area bounded to the north by Thirteenth Street, on the east by Hillside, on the south by Second Street, and on the west by Cleveland, which encompasses all areas within those parameters, and including the property on both sides of each of the boundary streets.

(b) Any person who commits an unlawful act of prostitution, or a prostitution-related act within the area set forth in subsection (a) is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than two thousand five hundred dollars or one year's imprisonment, or by both such fine and imprisonment. Upon a ~~first~~ conviction of a violation of this section, the

court shall impose a fine of not less than two hundred dollars nor not more than five hundred one thousand dollars, and a mandatory jail sentence of not less than ~~five consecutive days nor more than six months'~~ one year imprisonment or both such fine and/or imprisonment. ~~Upon a second conviction of a violation of this section, the court shall impose a fine of not less than five hundred dollars nor more than one thousand dollars and a mandatory jail sentence of not less than thirty consecutive days nor more than one year's imprisonment. Upon a third or a subsequent conviction of a violation of this section, the court shall impose a fine of not less than one thousand dollars nor more than two thousand five hundred dollars and a mandatory jail sentence of not less than ninety consecutive days nor more than one year's imprisonment. No person shall be eligible for probation or parole until serving the entire minimum sentence.~~

(c) For the purposes of this section, an unlawful act of prostitution or a prostitution-related act shall include the following sections of this code, and any amendments thereto: 5.68.010 (prostitution), 5.68.020 (patronizing a prostitute), 5.68.030 (promoting prostitution), 5.68.110 (soliciting for immoral purposes), 5.68.170 (sodomy for hire), 5.68.180 (patronizing a person offering sodomy for hire), 5.68.190 (promoting sodomy for hire), 5.68.200 (sodomy), or 5.68.210 (loitering for the purpose of solicitation).

~~(d) For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section, it is irrelevant whether an offense occurred before or after conviction for a previous offense.~~



~~(e) The imposition of the fines established in subsection (b) herein shall be mandatory and the court shall not waive, remit, suspend, parole or otherwise excuse the payment thereof except that defendants who are in violation of this section due to their commission of an act in violation of Sections 5.68.101 (prostitution), 5.68.110 (solicitation for immoral purposes) or 5.68.170 (sodomy for hire) shall be eligible to have such fines suspended by their agreement to enter and successfully complete a court ordered program of treatment and supervision. The court may also order that any defendant perform community service specified by the court but such an order shall be entered only after the court has required the defendant to file an affidavit of such defendant's financial condition as required by Section 1.04.210(e) of this code and amendments thereto, and the court has found from the information contained in the affidavit that the defendant is financially unable to pay the fines imposed herein.~~

~~(f)~~ (d) If any subsection, clause or provision of this section is for any reason held illegal, invalid or unconstitutional, such action shall not affect the remaining provisions of this section which shall remain valid to the extent possible.”

SECTION 43. Section 5.72.010 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

~~“Obstructing legal process or official duty~~ **Interference with Law Enforcement.** (a) Interference with law enforcement is falsely reporting to a law enforcement officer or state investigative agency that a crime has been

committed, knowing that such information is false and intending that the officer or agency acts in reliance or upon such information; or

(a) ~~Resisting Police Officers. It is unlawful for any person to resist or oppose any police officer in the discharge of any official duty.~~

(b) ~~Obstructing Legal Process of Official Duty. Obstructing legal process or duty is k~~Knowingly and willfully obstructing, resisting or opposing any person authorized by law to serve process in the service or execution or in the attempt to serve or execute any writ, warrant, process or order of a court, or in the discharge of any official duty.

(c) Violation—Penalty. Any person violating any provision of this section of the code is guilty of a misdemeanor and shall be punished by a fine of not more than two thousand five hundred dollars and/or an imprisonment of not more than one year and/or both such fine and imprisonment."

SECTION 44. Section 5.73.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Rioting.** ~~(1)~~ (a) Riot is:

(1) five or more persons acting together without lawful authority engaging in any use of force or violence which produces a breach of the public peace, or

(2) any threat to use such force or violence against any person or property if accompanied by power or apparent power of immediate execution, ~~by five or more persons acting together and without authority of law.~~

(2) (b) Any person who violates the provisions of this section within the corporate limits of the city is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed ~~one~~ two thousand five hundred dollars or by imprisonment for not more than one year or by both such fine and imprisonment.”

SECTION 45. Section 5.75.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Interference with conduct of public business—Defined.** Interference with the conduct of public business in public buildings is:

(a) Conduct at or in any public building owned, operated or controlled by the city or any of its political subdivisions so as to ~~willfully~~ knowingly deny to any public official, public employee, or any invitee on such premises, the lawful rights of such official, employee, or invitee to enter, to use the facilities, or to leave, any such public building; or

(b) ~~Willfully~~ Knowingly impeding any public official or employee in the lawful performance of duties or activities through the use of restraint, abduction, coercion, or intimidation or by force and violence or threat thereof; or

(c) ~~Willfully~~ Knowingly refusing or failing to leave any such public building upon being requested to do so by the chief administrative officer, or his designee, charged with maintaining order in such public building, if such person is committing, threatens to commit, or incites others to commit, any act which did or would if completed, disrupt, impair, interfere with, or obstruct the lawful

missions, processes, procedures or functions being carried on in such public building; or

(d) ~~Wilfully~~ Knowingly impeding, disrupting or hindering the normal proceedings of any meeting or session conducted by any judicial or legislative body or official at any public building by any act of intrusion into the chamber or other areas designated for the use of the body, or official conducting such meeting or session, or by any act designed to intimidate, coerce or hinder any member of such body, or any official engaged in the performance of duties at such meeting or session; or

(e) ~~Wilfully~~ Knowingly impeding, disrupting or hindering, by any act of intrusion into the chamber or other areas designed for the use of any executive body or official, the normal proceedings of such body or official.”

SECTION 46. Section 5.75.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Interference with conduct of public business—Misdemeanor.**

Interference with the conduct of public business in public buildings is a misdemeanor.

Upon conviction such person shall be punished by a fine not to exceed two thousand five hundred dollars (\$2,500.00) or one year imprisonment or both such fine and imprisonment.”

SECTION 47. Section 5.82.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Telephone service—Interfering with.** ~~(1)~~ (a) It is unlawful for any person to use, ~~cause to be used, or knowingly permit another to use,~~ any telephone instrument, telephone equipment, ~~or~~ telephone facilities or telefacsimile communication device for any of the following purposes:

~~(a)~~ (1) ~~Knowingly Making~~ make or transmit any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy or indecent; or

~~(b)~~ (2) Making a telephone call, whether or not conversation ensues, with intent to abuse, threaten or harass any person at the called number; or

~~(c)~~ (3) Making or causing the telephone of another repeatedly to ring or repeatedly transmit a telefacsimile communication; with intent to harass any person at the called number; or

~~(d)~~ ~~Making repeated telephone calls, during which conversation ensues, solely to harass any person at the called number; or~~

~~(e)~~ (4) ~~Knowingly Playing~~ play any recording on a telephone, except recordings such as weather information or sports information when the number thereof is dialed unless the person or group playing the recording shall identify itself or himself or herself and state that it is a recording; or

(f) ~~Impairing, injuring or damaging the business of any person at the number called;~~

(5) Knowingly permit any telephone or telefacsimile communication under one's control to be used in violation of this section.

(b) As used in this section 'telefacsimile communication' means the use of electronic equipment to send or transmit a copy of a document via telephone line.

~~(2)~~ (c) Any person who shall commit an act prohibited by ~~subsection (1)~~ of this section shall be punished by a fine of not more than two thousand five hundred dollars or by one year imprisonment, or by both such fine and imprisonment.”

SECTION 48. Section 5.85.010 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Unlawful Interference with a Firefighter.** Unlawful Interference with a firefighter is knowingly:

(a) Interfering with any firefighter while engaged in the performance of such firefighter's duties;

(b) Obstructing, interfering with or impeding the efforts of any firefighter to reach the location of a fire or other emergency; or

(c) Unlawful interference with a firefighter is a misdemeanor. Any person convicted of violating this section shall be sentenced to a term of

imprisonment of not more than six months and/or a fine not to exceed one thousand dollars.”

SECTION 49. Section 5.85.020 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Interference with Emergency Medical Services Personnel.**

(a) Unlawful interference with an emergency medical services attendant is knowingly:

(1) Interfering with any attendant while engaged in the performance of such attendant’s duties; or

(2) Obstructing, interfering with or impeding the efforts of any attendant to reach the location of an emergency.

(b) Unlawful interference with an emergency medical services attendant is a misdemeanor. Any person convicted of violating this section shall be sentenced to a term of imprisonment of not more than six months and/or a fine not to exceed one thousand dollars.”

SECTION 50. Section 5.88.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Unlawful discharge of a firearm, air rifles, pellet guns and BB guns.**

~~(4)~~ (a) It is unlawful for any person to discharge or fire any gun, pistol, air rifle, pellet gun, BB gun or any other firearm within the corporate limits of the city except at any properly licensed shooting gallery or upon a pistol range or at a gun club, either of which shall be approved by the chief of police.

~~(2)~~ (b) This section shall not apply to law enforcement officers while actually engaged in the performance of such officer's duty.

~~(3)~~ (c) This section shall not apply to health officers while actually engaged in the performance of such officer's duty.

~~(4)~~ (d) This section shall not apply to historical re-enactors and actors when engaged in performances and demonstrations when the powder charge does not exceed thirty grains for pistols, sixty-five grains for long guns and one-quarter pound for cannon, and the gun contains no projectile other than the minimum amount of wadding necessary to hold the powder charge in place. Provided, however, this subsection shall only apply to those performances and demonstrations which have been approved in advance in writing by the city manager or the city managers designee.

~~(5)~~ (e) Any person who violates any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

~~(6)~~ (f) In addition to the penalty for the violation of this section, it shall be the duty of the municipal court judge to order any weapon seized in connection with such violation to be forfeited to the city and the same shall be disposed of by the chief of police pursuant to Section 5.88.010~~(8)~~(11)."



SECTION 51. Section 5.88.030 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Air rifles, pellet guns and BB guns—Carrying within the city.**

~~(1)~~ (a) It is unlawful for any person to carry an air rifle, pellet gun or BB gun on the streets, alleys or public places within the corporate limits of the city unless the air rifle, pellet gun or BB gun is dismantled or in a scabbard.

~~(2)~~ (b) Any person who violates any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

~~(3)~~ (4) In addition to the penalty for the violation of this section, the municipal court judge may, in his or her discretion, order such air rifle, pellet gun or BB gun forfeited to the city and disposed of pursuant to Section 5.88.010~~(8)~~(11).”

SECTION 52. The originals of Sections 5.01.020, 5.10.010, 5.10.020, 5.10.025, 5.10.035, 5.15.010, 5.24.010, 5.24.040, 5.26.020, 5.28.010, 5.30.020, 5.32.010, 5.36.030, 5.38.036, 5.42.010, 5.42.015, 5.42.020, 5.42.035, 5.42.060, 5.44.040, 5.66.010, 5.66.050, 5.68.020, 5.68.030, 5.68.110, 5.68.120, 5.68.140, 5.68.150, 5.68.155, 5.68.156, 5.68.170, 5.68.180, 5.68.190, 5.68.200, 5.68.215, 5.68.220, 5.72.010, 5.73.050, 5.75.010, 5.75.020, 5.82.010, 5.88.020 and 5.88.030 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 53. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once of a summary of the

ordinance, in the official city paper. Publication shall occur after July 1, 2012 and comply with the provisions of House Bill 2166 (2012).

PASSED by the governing body of the City of Wichita, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Carl Brewer, Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

Approved as to Form:

\_\_\_\_\_  
Gary E. Rebenstorf  
Director of Law

**CITY OF WICHITA**  
**City Council Meeting**  
**April 17, 2012**

**TO:** Mayor and City Council

**SUBJECT:** Kingsbury Tract, Future Park Site Development (District VI)

**INITIATED BY:** Department of Park and Recreation

**AGENDA:** Unfinished Business

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**Recommendation:** Approve the Bonding Resolution and Supplemental Agreement.

**Background:** Since 2004, sand mining operations have been carried out on the Kingsbury Tract, beginning with the northeastern portion of what will become a large recreational lake system. On September 11, 2007, the City Council authorized funding for design of a Master Plan for a future park at this site, and on June 6, 2008, approved a contract with a design team comprised of RDG Planning and Design (RDG), Cook Flatt and Strobel (CFS) and Applied Ecological Services (AES). In 2008 and 2009, the Kingsbury Park Master Plan was developed by this team and presented at a City Council Workshop on October 20, 2009. Mass grading, drainage and restoration plans and reports have been completed for 'Area A' and plans to proceed with 'Area B' are anticipated for 2012.

**Analysis:** On April 3, 2012, the City Council voted to table action until new Council members could be briefed on the Kingsbury Project. The briefing was held on April 13, 2012. The 2011-2020 approved Capital Improvement Program (CIP) contains funding in 2012 and 2013 to develop infrastructure plans for the future park. The 2012 CIP funds are earmarked for grading, drainage, staging and restoration plans for Area "B" as well as implementation services of the entire site (Area A and B) of the Kingsbury Tract. Area "B" is generally located north of Area A and north of the Brooks site (see attachment). A contract has been prepared in the amount of \$281,300 to the RDG team to develop these documents. These plans will help guide development and the phasing timeline critical to coincide with the phasing of the sand mining so that the lake system will be developed correctly. Sand mining allows the City to "sculpt" the lake bottom in varying and unique configurations to accommodate a variety of different aquatic uses. With proper planning and design, the Kingsbury Tract will become a one-of-a-kind recreational venue for Wichita and the surrounding area.

**Financial Considerations:** The 2012 CIP provides \$300,000 for Kingsbury Park.

**Goal Impact:** The initiation of this project will greatly enhance the Quality of Life for citizens of Wichita by increasing recreational opportunities. Kingsbury Park is being designed as a regional aquatic destination with exceptional facilities with a variety of uses.

**Legal Considerations:** The Law Department has approved the Agreement and Bonding Resolution as to form.

**Recommendation/Action:** It is recommended that the City Council approve the Supplemental Agreement, adopt the Bonding Resolution, and authorize the necessary signatures.

**Attachments:** Bonding Resolution, Location Map, and Supplemental Agreement with RDG Planning and Design.

**RESOLUTION NO. 12-082**

A RESOLUTION AUTHORIZING THE ISSUANCE OF BONDS BY THE CITY OF WICHITA AT LARGE FOR THE KINGSBURY TRACT FUTURE PARK SITE DEVELOPMENT.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS;

SECTION 1: That the City of Wichita finds it necessary to make certain related improvements as follows:

Grading, drainage, staging and restoration plans for Area “B” as well as implementation services of the entire site (Area A and B) of the Kingsbury Tract Development Area.

SECTION 2: That the cost of said public improvements shall be paid by the issuance and sale of general obligation bonds by the City of Wichita at large, in the manner provided by law and under the authority of City of Wichita Charter Ordinance No. 156. The total cost is estimated not to exceed \$300,000 exclusive of the costs of interest on borrowed money.

SECTION 3: That the advisability of said improvements is established as authorized by City of Wichita Charter Ordinance No. 156.

SECTION 4: That this resolution shall take effect and be in force from and after its passage and publication once in the official city paper.

ADOPTED at Wichita, Kansas, this 17th day of April, 2012.

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CARL BREWER, MAYOR

ATTEST:

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KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

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GARY REBENSTORF, DIRECTOR OF LAW

City of Wichita  
City Council Meeting  
April 17, 2012

**To:** Mayor and City Council

**Subject:** Appeal to City Council of a Protest by Universal Oil of the Award of Group 1 Contract FB 130274 (All Council Districts)

**Initiated By:** Public Works & Utilities

**Agenda:** New Business

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**Recommendation:** Reaffirm the City Council award of Group 1 of Contract FB 130274 to Crossfaith Ventures, LC.

**Background:** On January 23, 2012, the Board of Bids recommended the award of Contract FB 130274 as follows:

- 1) Group 1 (for full synthetic lubricating fluids) to Crossfaith Ventures, LC, a Hutchinson based company;
- 2) Group 2 (for conventional lubricating fluids) to Universal Lubricants, LLC, a Wichita based company; and
- 3) Group 3 (for synthetic transmission fluids) to Heathwood Oil, Inc, a Kansas City, Kansas based company.

The City Council awarded this bid on January 24, 2012. After this bid award by the Council, Universal Lubricants, LLC protested the bid award through testimony presented to the Board of Bids on March 12, 2012. The Board of Bids unanimously reaffirmed its original recommendation. On March 28, 2012, Universal Lubricants, LLC appealed directly to the City Council as provided for in the City's procurement policy.

**Analysis:** Universal Lubricants, LLC has exhausted its appeal process through City staff and is now taking its protest to the City Council.

Universal Lubricants, LLC had the lowest unit price bid, but its bid documents pertaining to Group 1 were found to be non-responsive because it did not provide a required extended warranty. This warranty is critical to be able to extend oil drain intervals for police patrol cars from the manufacturers recommended 6,000 miles to at least 12,000 miles. The longer interval reduces the financial and environmental cost per mile of lubricants, filters, and disposal of used oil. The less frequent service also reduces shop labor cost, vehicle downtime, and the loss of commissioned officer time on patrol. The warranty protects the City from loss/damage of lubricated parts if that loss occurs because of the extended oil change intervals and is therefore not covered by the manufacture warranty.

Universal Lubricants, LLC raised policy arguments relating to protection of assets by measured oil change interval increases. The specifications did not call for a specific change interval, but did require an extended warranty. The warranty offered by Crossfaith Ventures, LC provides a change interval that is twice the current practice. The limited warranty offered by Universal Lubricants, LLC was based on stair-stepped change intervals, was not quantified, and was expressly subject to further engineering analysis and approval. Therefore, not only was improvement in the drain interval not warranted by Universal, it was not promised to be warranted.

**Financial Consideration:** Crossfaith Ventures, LC was and is the lowest bidder meeting the bid specifications of Group 1 of Contract FB 130274. The lowest lifecycle cost to the City will be realized by award to Crossfaith Ventures, LC.

**Goal Impact:** This formal bid will support #3 “Ensure efficient infrastructure” by securing the desired engine protection for heavy use city passenger vehicles.

**Legal Consideration:** The City Law Department, through the Deputy City Attorney assigned to provide services to the Purchasing division of the Finance Department, has assisted City staff in the proper handling of this bid protest. As dictated by due process, the City Attorney, who has not participated in the Board of Bids decisions being reviewed, and will be available to assist the City Council with procedural matters in the hearing of this protest. The agreed hearing procedure with Universal Lubricants, LLC is set out by separate document.

**Recommendation/Actions:** It is recommended that the City Council reaffirm its award of Group 1 of Contract FB 130274 to Crossfaith Ventures, LC.

**Attachment:** 1) Contract FB 130274 bid package; 2) Minutes - Board of Bids and Contracts Meeting of January 23, 2012; 3) Minutes of City Council Meeting Minutes of January 24, 2012; 4) March 12, 2012 Board of Bids Bid Protest Decision Letter to Universal Lubricants, LLC; 5) March 28, 2012 Law Department Letter to Universal Lubricants, LLC on City Council presentation.

( )Published in The Wichita Eagle, Tuesday, December 27, 2011.

## **FORMAL BID – FB130274**

Sealed bids will be received in the office of the City Purchasing Manager, 12th Floor, City Hall, 455 North Main, Wichita, Kansas, prior to **TEN O'CLOCK A.M., FRIDAY, DECEMBER 30, 2011.** "Request For Formal Bid" form **MUST** be used to submit your bid unless you are submitting your bid on our website at (<http://ep.wichita.gov>) using your secure login/password:

### **VARIOUS DEPARTMENTS, BOARDS AND AGENCIES**

**Lubricating Oil, Gear Oil, Grease, Transmission Fluid  
and Oil Analysis (Alternate Bid)**

AS PER SPECIFICATIONS

F.O.B.: Wichita, Kansas

Bids will be opened after ten o'clock a.m., in the Board Room, 1<sup>st</sup> Floor, City Hall, 455 North Main, Wichita, Kansas.

Specifications and bid forms are on file in the office of the City Purchasing Manager, 12th Floor, City Hall, 455 N. Main, Wichita, Kansas 67202, (316) 268-4636. This information may also be obtained on our website above.

Dated at Wichita, Kansas this 22nd day of December, 2011.

Melinda A. Walker  
Purchasing Manager

## NOTICE...NOTICE...NOTICE

### NON-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY

#### AFFIRMATIVE ACTION PROGRAM REQUIREMENTS

1. It is the policy of the City of Wichita to require that all contracts of the City and its agencies include provisions to ensure that applicants for employment with its contractors, subcontractors, vendors and suppliers are selected and employees are treated during employment, without regard to race, color, sex, religion, national origin, ancestry, disability, or age except where age is a bona fide occupational qualification.

2. The Kansas Act Against Discrimination (Kansas Statutes Annotated 44-1001 et. seq., as amended) requires every person who enters into a contract with the City of Wichita for construction, alteration or repair of any public building or public work or for the acquisition of materials, equipment, supplies or services to:

- a. Observe the provisions of the Kansas Act Against Discrimination and not to discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, or age unrelated to such person's ability to engage in the particular work.
- b. In all solicitations or advertisement for employees, the contractor shall include the phrase "EQUAL OPPORTUNITY EMPLOYER" or a similar phrase to be approved by the Kansas Human Rights Commission.
- c. Upon request, inform the Kansas Human Rights Commission and/or the City Of Wichita Finance Department in writing the manner in which such person will recruit and screen personnel to be used in performing the contract.
- d. Contractor shall include the provisions of Paragraphs (a), (b), (c), and (d) of this Paragraph 2, in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.
- e. EXEMPTED from these requirements are:
  - (1) Any contractor who has already complied with the provisions set forth in these sections by reason of holding a contract with the federal government or a contract involving federal funds. (Proof of compliance is required).
  - (2) Contracts entered into by any contractor who employs fewer than four (4) employees during the term of such contract.
  - (3) Contractors who hold contracts with the City of Wichita with a cumulative total value of five thousand dollars (\$5,000.00) or less during the City fiscal year.
- f. Reports requested by the Kansas Human Rights Commission shall be made on forms prepared by the Commission, copies of which are available from the Kansas Human Rights Commission, Contract Auditor, 900 S.W. Jackson Street, Suite 851 S., Topeka, Kansas, 66612.

3. During the performance of any City contract or agreement, the contractor, subcontractor, vendor or supplier of the City shall comply with all the provisions of the Civil Rights Act of 1964, as amended; The Equal Employment Act of 1972, Executive Orders 11246, 11375, 11141, Part 60 Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, The Americans with Disabilities Act and/or any law, regulation or amendments as may be promulgated thereunder.

4. Failure of any contractor, subcontractor, vendor or supplier to report to the Kansas Human Rights Commission as required by K.S.A. 1976 Supp. 44-1031 as amended or State statutes, Federal statutes or regulations pertaining to discrimination, which finding or decision or order has become final, shall be a breach of contract and any such contract may be canceled, terminated or suspended in whole or in part by the City or its contracting agency.

5. Compliance with the Equal Employment Opportunity requirements of the City of Wichita does not relieve the contractor, subcontractor, vendor or supplier of the necessity of also complying with the Kansas Act Against Discrimination.

Exemptions Claimed: Four (4) Employees or less; Federal Contract, Contract less than \$5,000.00.

**NOTE: You will be contacted if you are the successful vendor and do not have a current EEO/AA submittal on file with the Purchasing Office and/or have not REGISTERED VIA THE CITY'S WEB SITE: <http://ep.wichita.gov> . Questions about the City of Wichita's EEO/AA submittal requirements should be directed to (316) 268-4417.**



# FORMAL BID

## FB130274

### Purchasing Department

Lube Oil, Gear Oil, Grease, Tran Alt Bid

### Responses are due before:

Friday, December 30, 2011 10:00:00AM

### RETURN TO:

City of Wichita  
Purchasing Manager  
City Hall, 12th Floor  
455 N Main  
Wichita KS 67202



CITY OF  
WICHITA

### CONTACT INFORMATION:

Contact: Clarence Rose

455 North Main  
12TH FLOOR  
Wichita, KS 67202

Phone: (316) 268-4414

Fax: (316) 268-4656

e-mail: crose@wichita.gov

### DELIVERY INFORMATION

Deliver To: MELINDA WALKER  
PURCHASING MANAGER  
455 N MAIN 12TH FL  
PURCHASING DIVISION  
WICHITA, KS 67202-

Phone: (316) 268-4411

Fax: (316) 268-4656

e-mail: mwalker@wichita.gov

PLEASE QUOTE DELIVERED PRICES ON THE EQUIPMENT, MATERIAL OR SERVICES LISTED BELOW

### GROUP 1

#### Item Description

		Qty	U.O.M.	Unit Price	Extended Amount
1	FULL SYNTHETIC (SAE 5W40): Must Meet API Service Classifications CJ-4, CI-4, CI-4 Plus, CH-4, CG-4, CF-4, SM, SL, SJ, SH. Specifications are good for both gasoline and diesel engines. Over the road fleets, automobiles, light and medium duty trucks, stationary engines, generators, construction and farm equipment. The product must meet and exceed the engine requirements of Caterpillar, Cummins, Detroit Diesel, Deutz, Mack, Mercedes Benz, Navistar and Dexos for GM vehicles.. (55 GALLON DRUM) TRADE NAME _____ DRUM DEPOSIT _____	3,000.00	GL	_____	_____
2	FULL SYNTHETIC (SAE 5W40): Must Meet API Service Classifications CJ-4, CI-4, CI-4 Plus, CH-4, CG-4, CF-4, SM, SL, SJ, SH. Specifications are good for both gasoline and diesel engines. Over the road fleets, automobiles, light and medium duty trucks, stationary engines, generators, construction and farm equipment. The product must meet and exceed the engine requirements of Caterpillar, Cummins, Detroit Diesel, Deutz, Mack, Mercedes Benz, Navistar, and Dexos for GM vehicles.. BULK DELIVERY (MIN.1,000 GALLONS) TRADE NAME _____	3,000.00	GL	_____	_____

3	FULL SYNTHETIC (SAE 5W30): EQUAL TO MOBILE 1. Must meet API Service Classifications SM/CF, ILSAC GF-4, GM 6094M, Ford ESE-M2C153-E, WWWS M2C929-A, and Dexos for GM vehicles. According to vendors GF-4 specifications is compatible for all vehicles up to the year 2011. The normal requirements recommended for older engines would be an API SH, SG, SF, SE service classification. (55 GALLON DRUM) TRADE NAME _____ DRUM DEPOSIT _____	3,000.00	GL	_____	_____
4	FULL SYNTHETIC (SAE 5W30): EQUAL TO MOBILE 1. Must meet API Service Classifications SM/CF, ILSAC GF-4, GM 6094M, Ford ESE-M2C153-E, WWWS M2C929-A, and Dexos for GM vehicles.. According to vendors GF-4 specifications is compatible for all vehicles up to the year 2011. The normal requirements recommended for older engines would be an API SH, SG, SF, SE service classification. BULK DELIVERY (MIN.500 GALLONS) TRADE NAME _____	3,000.00	GL	_____	_____
5	FULL SYNTHETIC (SAE 5W20): EQUAL TO MOBILE 1. Must meet API Service Classifications SM/CF, ILSAC GF-4, GM 6094M, Ford ESE-M2C153-E, WWWS M2C929-A, and Dexos for GM vehicles.. According to vendors GF-4 specifications is compatible for all vehicles up to the year 2011. The normal requirements recommended for older engines would be an API SH, SG, SF, SE service classification. (55 GALLON DRUM) TRADE NAME _____ DRUM DEPOSIT _____	1,000.00	GL	_____	_____
6	ANALYSIS OF OIL SAMPLES  TIME RESPONSE _____	1,200.00	EA	_____	_____

**GROUP 1 TOTAL**

**GROUP 2**

<u>Item</u>	<u>Description</u>	<u>Qty</u>	<u>U.O.M.</u>	<u>Unit Price</u>	<u>Extended Amount</u>
7	SINGLE VISCOSITY (SAE 30) LUBRICATING ENGINE OIL FOR DIESEL ENGINES MUST MEET API CLASSIFICATION CF-2, CF, SH, AND SJ BULK DELIVERY (MIN 500 GALLONS) TRADE NAME _____	3,000.00	GL	_____	_____

8	MULTI-VISCOSITY (SAE 15W40) LUBRICATING ENGINE OIL FOR DIESEL ENGINES, MUST MEET API CLASSIFICATION CG-4, CF-4, CF-2, CF, SH, SJ, CJ-4 LOW ASH BULK DELIVERY (MIN.1,000 GALLONS) TRADE NAME _____	5,000.00	GL	_____	_____
9	MULTI-VISCOSITY (SAE 15W40) LUBRICATING ENGINE OIL FOR DIESEL ENGINES; MUST MEET API CLASSIFICATION C4G C-4F, CF-2, CF, SH, SJ, CJ-4 LOW ASH (55 GALLON DRUM) TRADE NAME _____ DRUM DEPOSIT _____	1,000.00	GL	_____	_____
10	MULTI-VISCOSITY (SAE 15W40) LUBRICATING ENGINE OIL FOR DIESEL ENGINES; EQUAL TO DELVAC 1300 SUPER (55 GALLON DRUM) TRADE NAME _____ DRUM DEPOSIT _____	1,000.00	GL	_____	_____
11	MULTI-VISCOSITY (SAE 5W30) LUBRICATING ENGINE OIL FOR GASOLINE ENGINES; MUST MEET API CLASSIFICATION SJ. (55 GALLON DRUM) TRADE NAME _____ DRUM DEPOSIT _____	3,000.00	GL	_____	_____
12	MULTI-VISCOSITY (SAE 5W30) LUBRICATING ENGINE OIL FOR GASOLINE ENGINES; MUST MEET API CLASSIFICATION SJ. BULK DELIVERY (MIN. 500 GALLONS) TRADE NAME _____	6,000.00	GL	_____	_____
13	MULTI-VISCOSITY (SAE 5W20) LUBRICATING ENGINE OIL FOR GASOLINE ENGINES; MUST MEET API CLASSIFICATION SJ. (55 GALLON DRUM) TRADE NAME _____ DRUM DEPOSIT _____	1,000.00	GL	_____	_____
14	TRANSMISSION FLUID; EQUAL TO GM DEXRON III MERCON QUART CANS TRADE NAME _____	300.00	GL	_____	_____
15	TRANSMISSION FLUID; EQUAL TO GM DEXRON VI MERCON QUART CANS TRADE NAME _____	120.00	GL	_____	_____
16	TRANSMISSION FLUID EQUAL TO GM DEXRON III MERCON DEXRON VI MERCON 55 GALLON DRUMS TRADE NAME _____ DRUM DEPOSIT _____	440.00	GL	_____	_____
17	TRANSMISSION FLUID TYPE F; EQUAL TO FORD M2C33F QUART CANS- THIS ITEM HAS BEEN DELETED. NO BID THIS ITEM.	50.00	GL	_____	_____
18	TRANSMISSION FLUID TYPE F; EQUAL TO FORD M2C33F MERCON V, SP, LV- THIS ITEM HAS BEEN DELETED. NO BID THIS ITEM.	440.00	GL	_____	_____
19	TRANSMISSION FLUID; EQUAL TO PENNZOIL MULTI VEHICLE ATF 55 GALLON DRUMS TRADE NAME _____ DRUM DEPOSIT _____	1,100.00	GL	_____	_____

20	HYDRAULIC AND WET BRAKE LUBRICANT, EQUAL TO IHC HI-TRAN FLUID B-6 5 GALLON CONTAINERS TRADE NAME _____	40.00	GL	_____	_____
21	HYDRAULIC AND WET BRAKE LUBRICANT. EQUAL TO IHC HI-TRAN FLUID B-6 55 GALLON DRUMS TRADE NAME _____ DRUM DEPOSIT _____	550.00	GL	_____	_____
22	HYDRAULIC AND WET BRAKE LUBRICANT. EQUAL HYDRO 1000 55 GALLON DRUMS TRADE NAME _____ DRUM DEPOSIT _____	550.00	GL	_____	_____
23	HYDRAULIC OIL-R&O-AW #46/#68 EQUAL TO DENISON HF-O VAN PISTON REQUIREMENTS 55 GALLON DRUMS TRADE NAME _____ DRUM DEPOSIT _____	2,805.00	GL	_____	_____
24	GEAR OIL API CLASSIFICATIONS GL-5 85W140 MULTI-VISCOSITY 400 LB DRUM TRADE NAME _____ DRUM DEPOSIT _____	10,800.00	LB	_____	_____
25	GEAR OIL API CLASSIFICATIONS GL5 85W140 - VISCOSITY 35 LB PAIL- THIS ITEM HAS BEEN DELETED. NO BID THIS ITEM.	175.00	LB	_____	_____
26	WHEEL BEARING GREASE LITHIUM COMPLEX NLGI # 2 35 LB PAIL TRADE NAME _____ NAME MANUFACTURER _____ LOCATION OF SUPPLY SOURCE _____	175.00	LB	_____	_____
27	GREASE MULTIPURPOSE LITHIUM BASE WITH ADDITIVES 400 LB DRUM TRADE NAME _____ DRUM DEPOSIT _____	2,400.00	LB	_____	_____
28	GREASE MULTIPURPOSE, LITHIUM BASE WITH EP, ADDITIVES 35 LB PAIL TRADE NAME _____	385.00	LB	_____	_____
29	GREASE MULTIPURPOSE LITHIUM BASE WITH EP, ADDITIVES 14 OZ TUBE TRADE NAME _____	1,170.00	EA	_____	_____
30	ANALYSIS OF OIL SAMPLES TIME RESPONSE _____	1,200.00	EA	_____	_____
31	SINGLE VISCOSITY (SAE 30) LUBRICATING ENGINE OIL, SUPER HIGH PERFORMANCE DIESEL (SERVICE PRO NOT ACCEPTABLE) API CF2 CF SJ 55 GALLON DRUM TRADE NAME _____ DRUM DEPOSIT _____	220.00	GL	_____	_____

32	MULTI-VISCOSITY SAE (15W40) LUBRICATING OIL SUPER HIGH PERFORMANCE DIESEL (SERVICE PRO NOT ACCEPTABLE) API C14 SL; MUST MEET CATERPILLAR ECF1 AND MACK EON PREMIUM PLUS 03 55 GALLON DRUM TRADE NAME _____ DRUM DEPOSIT _____	220.00	GL	_____	_____
33	GEAR OIL; API CLASSIFICATION GL5; 18450 MULTI-VICOSITY 120 LB KEG TRADE NAME _____	240.00	LB	_____	_____
34	WHEEL BEARING GREASE, LITHIUM COMPLEX NLGI # 2 120 LB KEG TRADE NAME _____	240.00	LB	_____	_____
35	TRANSMISSION FLUID; EQUAL TO MERCON V, SP, LV, QUART CANS TRADE NAME: _____	50.00	GL	_____	_____

**GROUP 2 TOTAL**

**GROUP 3**

<u>Item</u>	<u>Description</u>	<u>Qty</u>	<u>U.O.M.</u>	<u>Unit Price</u>	<u>Extended Amount</u>
36	SYNTHETIC TRANSMISSION FLUID: Must meet API Service Classifications for Dexron III & V, Mercon V, LV , SP Multi-Vehicle & Import Automatic Transmission Fluid will meet all vehicle specifications except for CVT's and Allison. It is not intended for applications where Ford Type F ATF is required. QUART CANS TRADE NAME _____	400.00	GL	_____	_____
37	SYNTHETIC TRANSMISSION FLUID: Must meet API Service Classifications for Dexron VI. SP Multi-Vehicle & Import Automatic Transmission Fluid will meet all vehicle specifications except for CVT's and Allison. It is not intended for applications where Ford Type F ATF is required. QUART CANS TRADE NAME _____	400.00	GL	_____	_____
38	SYNTHETIC TRANSMISSION FLUID: Must meet API Service Classifications for Dexron III & V Mercon V, LV , SP Multi-Vehicle & Import Automatic Transmission Fluid will meet all vehicle specifications except for CVT's and Allison. It is not intended for applications where Ford Type F ATF is required. 55 GALLON DRUMS TRADE NAME _____ DRUM DEPOSIT _____	880.00	GL	_____	_____
39	SYNTHETIC TRANSMISSION FLUID: Must meet API Service Classifications for Dexron VI. SP Multi-Vehicle & Import Automatic Transmission Fluid will meet all vehicle specifications except for CVT's and Allison. It is not intended for applications where Ford Type F ATF is required. 55 GALLON DRUMS TRADE NAME _____ DRUM DEPOSIT _____	880.00	GL	_____	_____

- |    |  |           |       |       |
|----|--|-----------|-------|-------|
| 40 | SYNTHETIC TRANSMISSION FLUID: Must meet API Service<br>Classifications for Dexron III & V Mercon V, LV SP Multi-Vehicle<br>& Import Automatic Transmission Fluid will meet all vehicle<br>specifications except for CVT's and Allison. It is not intended<br>for applications where Ford Type F ATF is required.<br>BULK DELIVERY (MIN. 250 GALLONS)<br>TRADE NAME _____ | 500.00 GL | _____ | _____ |
| 41 | SYNTHETIC TRANSMISSION FLUID: Must meet API Service<br>Classifications for Dexron VI., SP Multi-Vehicle & Import Automatic<br>Transmission Fluid will meet all vehicle specifications except for<br>CVT's and Allison. It is not intended for applications where<br>Ford Type F ATF is required.<br>BULK DELIVERY (MIN. 250 GALLONS)<br>TRADE NAME _____                 | 500.00 GL | _____ | _____ |

VENDORS MAY BID ON ANY OR ALL GROUPS. AWARD  
 WILL BE BASED ON THE LOWEST AND BEST TOTAL NET  
 BID PER GROUP, BASED ON THE ESTIMATED QUANTITIES.

**GROUP 3 TOTAL**

\_\_\_\_\_  
 Vendor Name

\_\_\_\_\_  
 Telephone Number (including area code)

\_\_\_\_\_  
 Vendor Address

\_\_\_\_\_  
 Fax Number (including area code)

\_\_\_\_\_  
 Vendor City/State/ZIP

\_\_\_\_\_  
 E-mail Address

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Vendor TIN/FEIN/SSN

\_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 Billing Terms

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Delivery or Completion Date

IN SUBMITTING THE ABOVE, THE VENDOR EXPRESSLY AGREES THAT, UPON ACCEPTANCE OF ANY OR ALL ITEMS, UNDER THE TERMS AND  
 CONDITIONS SHOWN ABOVE AND ATTACHED TO THIS FORM, BY THE CITY OF WICHITA, A CONTRACT SHALL THEREBY BE CREATED.

**THIS FORMAL BID FORM MUST BE SIGNED!**

**SPECIFICATIONS  
FOR  
LUBRICATING OIL, GEAR OIL, GREASE AND TRANSMISSION FLUID  
AND OIL ANALYSIS (ALTERNATE BID)**

Motor & Synthetic lubricating oil, gear oil, grease, transmission fluid and oil analysis used by the Fire, Health, Park, Police, Public Works & Utilities/Fleet, Water Departments, Airport Authority, Metropolitan Transit Authority and other boards and agencies. Deliveries to be made by the vendor to the various locations as ordered by the departments, boards and agencies.

Any cash discount allowed must be shown in the space provided on the "Request for Formal Bid" form.

**CONTRACT PERIOD:** Successful bidder agrees to enter into a formal contract for a period of one (1) year, with an option to renew under the same terms and conditions for one (1) or two (2) successive one (1) year periods by mutual agreement of both parties. This contract is subject to cancellation by the City upon thirty (30) days written notice.

**QUANTITIES:** The quantities indicated herein are estimated and shall be used to evaluate the bid only. The quantities purchased will be those actually required by the City of Wichita, Kansas, to operate its fleet of vehicles and equipment. The successful vendor agrees to maintain an adequate inventory to effectively service the needs of the City during the term of this contract.

**PRICES:** Prices quoted shall be delivered price. All transportation charges shall be prepaid to the destination and absorbed by the vendor. Prices must be guaranteed during the contract period not to exceed the bid price.

**TAXES:** All lubricating product purchased will be for the exclusive use of the City of Wichita, Kansas. Therefore, the Federal Excise Tax and State of Kansas Sales Tax shall not be imposed. The City of Wichita, Kansas, Federal Excise Exemption Certificate Number is 48-77-0021K. Do not include any Federal Excise Tax or State of Kansas Sales Tax in your bid.

**ORDER AND PAYMENTS:** Orders will be placed by the Department, Boards and Agencies. Payment will be made in regular routine upon receipt of invoices. City Agencies may use a City of Wichita Procurement Card (Visa) in lieu of a City warrant to pay for some of its purchases. No additional charges will be allowed for using the card.

**CONTAINERS:** Lubricating oils shall be shipped in clean fifty-five (55) gallon drums or bulk delivery containers and shall be delivered to the destination free from leakage.

Each drum or bulk deliver container shall be identified, by the vendor, with the type and grade of lubricating oil it contains, and the trade name or identification number under which proof of qualifications was issued by the U.S. Army Ordinance Department.

**SOURCE AND BRAND:** Show, in space provided, the name of the manufacturer, location of source of supply, the trade name under which the lubricating products will be furnished.

**SPECIFICATIONS:** Lubricating oils, gear oil and multipurpose grease must meet or exceed Military Specifications and/or API Classification as shown.

**SPECIAL ATTENTION** is called to the proof of qualification as required under these specifications. All lubricating oil furnished must carry the same "Trade Name" or identification under which proof of qualifications was issued by the U.S. Army Ordinance Department.

**QUALIFICATIONS OF BIDDERS AND REQUIRED INFORMATION:** Bids will be accepted only from suppliers who can supply the oils which are currently qualified under Military Specifications **and/or API Classification**.

In addition, the successful vendor will be required, upon request, to furnish Photostats or reproductions of documents, test reports, data sheets, etc., supplied by the Army or qualifying agency, giving the following information concerning the oil he will supply under the contract:

1. The Manufacturer's brand name or code number.
2. Qualification number and date of qualification.
3. A typical analysis of the qualified oil showing results of all tests required by Military Specifications and/or API Classification.
4. The Acceptance Test Tolerance established by the qualifying agency as outlined in Military Specifications and/or API Classification.

**WARRANTY:** Vendor shall provide a warranty letter for extended service intervals. This warranty shall cover any oil related issues that the equipment manufacturer fails to warranty do to extended service intervals. Failing to cover any issues that the equipment manufacture deems to extended service intervals will result in voiding the contract.

**OIL ANALYSIS:** Vendors shall conduct oil analysis of oil samples provided by the City of Wichita Fleet Maintenance. The following test shall be conducted during the oil analysis:

<b>Physical Test:</b>	Viscosity SUS-210 Degrees F
	SAE Grade 210 Degrees F
	Fuel Soot % WT
	Water



Fuel Dilution  
Anti-Freeze  
Oil Oxidation

**Wear Metal, PPM:**

Chromium  
Copper  
Iron  
Lead  
Tin  
Aluminum  
Silicon (Dirt)

**Additives and  
Other Metals, PPM:**

Antimony  
Barium  
Boron  
Cadmium  
Calcium  
Magnesium  
Molybdenum  
Nickel  
Phosphorous  
Silver  
Sodium  
Titanium  
Zinc

**TYPICAL TEST PROPERTIES:**

**Synthetic 5W30.**

ILSAC Performance GF-4  
Viscosity, cST @ 40°C  
Viscosity, cST @ 100°C  
Flash Point °F/°C

Specific Gravity @15°C  
Viscosity Index  
Sulfated Ash, wt%  
Pour Point, C

**TYPICAL TEST PROPERTIES:**

**Synthetic 15W40.**

Total Base Number (ASTM D-2896) Viscosity Index  
(ASTMD-2270)  
Flash Point °F/°C (ASTM D-92) Pour Point °F/°C  
(ASTM D-97)  
Viscosity, cST @ 40°C (ASTM D-445) Sulfated Ash, wt%  
(ASTM D-874)  
Viscosity, cST @ 100°C (ASTM D-445)  
Specific Gravity @ 60°F/15°C

**TYPICAL TEST PROPERTIES:**

**Synthetic TRANSMISSION FLUID.**

Specific Gravity @ 60°F/15°C (ASTM D-1298)

Flash Point . °C (ASTM D-92)                      Pour Point. °C  
(ASTM D-97)  
Viscosity, cST @ 40°C (ASTM D-445)      Viscosity Index  
(ASTM D-2270)  
Viscosity, cST @ 100°C (ASTM D-445)

All test results must be reported to Fleet Maintenance by mail or email  
[mnordick@wichita.gov](mailto:mnordick@wichita.gov)

**EMERGENCY NOTIFICATION** of abnormal test results shall be reported to Fleet Maintenance within 24 hours via email [mnordick@wichita.gov](mailto:mnordick@wichita.gov)

**SPECIAL NOTE:**

All bidders are requested to supply current printed literature, fully describing the products bid and showing the Military Specifications **and/or API Classification**, with the bid. Failure to respond to this request may be considered just cause for rejection of the bid.

**NOTE:** Items are ordered by the various departments on an "as needed" basis. Please note on the bid form if your bid is firm or escalating/de-escalating.

For any questions contact Janice Nava at (316)268-4018 or [JNava@wichita.gov](mailto:JNava@wichita.gov).

**END OF SPECIFICATIONS**

**SPECIAL CONDITIONS FORM BIDDING  
ESCALATING - DE-ESCALATING PRICES-FIRM FOR THREE (3) MONTHS  
ON  
REQUEST FOR FORMAL BIDS**

The City of Wichita desires a firm price, however, if it is not possible please follow the procedure outlined below.

Prices shall be net delivered prices with all handling and transportation charges prepaid to destination and absorbed by the vendor.

Prices are to be firm for a minimum of three (3) months. If after the three (3) month period of this contract, there are price adjustments by product manufacturers, the vendor(s) must verbally notify the Purchasing Division immediately upon receipt of such notice and then follow up with written confirmation of same.

The Purchasing Manager reserves the right to request copies of such notices by the product manufacturers from the vendor(s).

In the event the vendor's prices exceed local prevailing prices, the appropriate annual commodity trade index for materials, or the CPI index for professional services, the Purchasing Manager may negotiate the requested increase or may elect to re-bid the contract.

**Notice:** Unless otherwise indicated on the "Request For Formal Bid" form, all bids will be considered a firm bid and such bids will not include a price escalating - de-escalation clause.

## **CHEMICAL PURCHASE**

### **General Specifications**

A new OSHA Standard (29CFR 1910-1200) is intended to establish uniform requirements to ensure that all chemicals produced, imported or used in the U.S. are evaluated for hazards and that each container, having one or more hazardous substances herein, be labeled, tagged or marked. It also requires that this same hazard information and material safety data sheets be transmitted to affected purchasers (City) and employees.

To safeguard both the City of Wichita and its employees, successful bidders of all products containing one or more substance listed in the OSHA Standard 29CFR 1910 SUB-PART Z, TOXIC AND HAZARDOUS SUBSTANCES; THE THRESHOLD LIMIT VALUE FOR CHEMICAL SUBSTANCES AND PHYSICAL AGENTS IN THE WORKPLACE - ISSUED BY THE AMERICAN CONFERENCE OF GOVERNMENTAL INDUSTRIAL HYGIENIST; THE NATIONAL TOXICOLOGY PROGRAMS ANNUAL REPORT ON CARCINOGENS OR THE INTERNATIONAL AGENCY FOR RESEARCH ON CANCER'S MONOGRAPHICS, must meet the labeling requirements and furnish the necessary material safety data sheets to the City of Wichita.

Substances on these lists are contained in such products as; catalysts, refrigerants, heat transfer fluids; boiler additives, maintenance chemicals and cleaners, waxes and polishes, anti-freeze, adhesives, typewriter cleaners, solvents, paint thinners, etc.

Substances, subject to labeling regulations under the **FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT** (7USC136), the **FEDERAL FOOD, DRUG AND COSMETIC ACT** (21USC 310), the **FEDERAL ALCOHOL ADMINISTRATION ACT**, the **FEDERAL HAZARDOUS SUBSTANCES ACT** (15USC 1261) or the **SOLID WASTE DISPOSAL ACT** (42USC 6901) are exempt from this new OSHA Standard.

Immediately upon receipt of a City of Wichita Purchase Order, the Successful Bidder(s) will mail three (3) copies of the applicable MATERIAL SAFETY DATA SHEETS for each product supplied, **Referencing the Purchase Order Number** to the following address:

City of Wichita  
Safety Officer  
City Hall - 12th Floor  
455 North Main Street  
Wichita, Kansas 67202

2/01/91

## GENERAL SPECIFICATIONS

### BID FORMS

Unless bidding on-line, all bids MUST be submitted on the enclosed "Request For Formal Bid" form and signed by an officer or employee authorized to sign bids. Any exceptions, to the specifications, terms and/or other conditions concerning the bid, must be noted on the front of the "Request For Formal Bid" form to be considered. The "Request For Formal Bid" form is to be submitted in the enclosed pre-address envelope.

Bidders are requested to submit current literature or brochures relating to their bid.

### LICENSE

Vendors bidding on commodities or services for the City of Wichita must be currently licensed by the City of Wichita or the State of Kansas, where applicable, before a purchase order or contract will be issued.

### BILLING TERMS

Discounts for prompt payment will be considered in the evaluation of your bid. The discount time will not begin until the City receives all of the commodities or services. If testing is required, the discount time will begin upon completion of the testing. Billing terms must be noted on the bid form to consider the deduction in the award.

### CONTRACT

The successful bidder agrees to enter into a contract with the City, and when required, as per specifications, to furnish bond by a surety company authorized to do business in the State of Kansas.

### EMERGING & DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION ENCOURAGEMENT

The City of Wichita encourages all bidders to include emerging and disadvantaged business participation in their bids.

### ARBITRATION PROVISIONS

"Notwithstanding anything to the contrary contained in these bid documents or the contract to be awarded herein, the City shall not be subject to arbitration and any clause relating to arbitration contained in these bid documents or in the contract to be awarded herein shall be null and void."

### ANTITRUST LITIGATION CLAUSE

"For good cause, and as consideration for executing a purchase order/contract, the contractor, acting therein by and through its authorized agent, hereby conveys, sells, assigns, and transfers to the City of Wichita, all rights title and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of Kansas, relating to the particular product, products, or services purchased or acquired by the City of Wichita, Kansas, pursuant to a purchase order/contract.

### CONSTRUCTION - PAVING PROJECTS

On construction or paving projects, contractors MUST contact the City Controller's Office, City Hall, 12th Floor, 455 North Main Street for a Kansas Sales Tax Exemption Certificate prior to starting work. Contractors will be responsible for paying Kansas Sales Tax on any purchase for these projects made before the certificate is issued.

### RESTORATION

"Contractor shall, as a condition of final payment, restore all right-of-way and adjacent private property which has been disturbed, damaged or otherwise affected by construction to a condition equal to or better than existed prior to the commencement of construction. Such restoration shall include but not be limited to regrading and seeding of areas where grass was planted and growing prior to construction; provided, however, such regrading and seeding of lawn areas, when completed, shall be considered to be restoration of an area to a condition equal to or better than previously existing grass growth and Contractor shall have no responsibility to ensure growth of such seeded area(s). This restoration shall be considered part of the contract work and Contractor shall be responsible for the performance of such restoration work in the same manner as it is responsible for the performance of the contract work."

### FEDERAL EXCISE TAX

The articles specified in this bid are for the exclusive use of the City of Wichita, Kansas. Therefore, Federal Excise Tax shall not be imposed. The City of Wichita, Kansas Federal Excise Tax Exemption Certificate Number is 48 77 0021K.

### ESTIMATED QUANTITIES

If estimated quantities are shown, on the "Request For Formal Bid" form, they are used to evaluate the bid only. The figure(s) listed is the estimated usage only and is not intended to limit or guarantee in any way, the amount the City may purchase under the purchase order/contract.

### CITY OF WICHITA CREDIT CARD

Presently, many City Agencies use a City of Wichita Procurement Card (Visa) in lieu of a City warrant to pay for some of its purchases. No additional charges will be allowed for using the card.

### DELIVERY

Delays in delivery caused by bona fide strikes, government priority or requisitions, riots, fires, sabotage, acts of God or any other delays deemed by the Board of Bids and Contracts to be clearly and unequivocally beyond the contractor's control, will be recognized by the City, and the contractor will be relieved of the responsibility of meeting the delivery time, as stipulated in the contract, upon contractor's filing with the Board of Bids and Contracts a notarized just and true statement signed by a responsible official of the contractor's company, giving in detail all the essential circumstances which, upon verification by the City, justifies such action by the Board of Bids and Contracts.

### AWARD

The City, through its Board of Bids and Contracts reserves the right to accept or reject any or all bids and any part of parts of any bid and to waive formalities therein to determine which is lowest and best bid. Any bid which is incomplete, conditional, obscure, or which contains additions not called for or irregularities of any kind, may be cause for rejection of the bid. All bids are awarded subject to a check of the computations shown on the "Request For Formal Bid" form. In the event of a discrepancy in the extension(s) or total for the item(s), the unit cost shall prevail.

If there are tie bids, the Board of Bids and Contracts will recommend the successful bidder, and final determination will be made by the City Council.

**"THE AWARD WILL BE BASED ON THE LOWEST AND BEST TOTAL NET BID PER GROUP, BASED ON ESTIMATED QUANTITIES."**

Wichita, Kansas  
January 23, 2012  
10:00 a.m., Monday  
Conference Room, 12th Floor

**MINUTES - BOARD OF BIDS AND CONTRACTS\***

The Board of Bids and Contracts met with Martha Strayer, Administrative Assistant, Public Works Engineering in the Chair; Fanny Chan, Accountant, Finance, representing the Director of Finance, Elizabeth Goltry Wadle, Budget Analyst, Budget Office, Clarence Rose, Senior Buyer, representing Purchasing, Chase Fosse, Management Intern, representing the City Manager's Office and Janis Edwards Deputy City Clerk, present.

Minutes of the regular meeting dated January 9, 2012, were read and on motion approved.

Bids were opened on January 13<sup>th</sup> and 20<sup>th</sup>, 2012, pursuant to advertisements published on:

**Wichita Valley Center Flood Control Project Structure Rehabilitation. (Levees C, D, F, M, P, S & T) 468-84807/660811/869001. Local traffic shall be maintained. Districts I, II, III, IV, V and IV.**

Dondlinger and Sons - \$104,316.00

**2012 Sanitary Sewer Reconstruction Phase 1 (north of Harry, east of Meridian) (468-84806/620588/661704) Traffic to be maintained during construction using flagpersons and barricades. (District III, IV)**

Stannard Construction - \$23,100.00

**Water Distribution System to serve Scenic Landscapes (south of Maple, east of Julia) 448-90543/735471.**

Bids Rejected

The Purchasing Manager recommended that the contracts be awarded as outlined above, subject to check, same being the lowest and best bids within the Engineer's construction estimate.

On motion the Board recommended that the contracts be awarded as outlined above, subject to check, same being the lowest and best bids within the Engineer's construction estimate.

**PUBLIC WORKS AND UTILITIES DEPARTMENT/ FLEET AND FACILITIES:  
Janitorial Services Police Substations.**

Clean Country\* - \$37,044.00 Base Bid  
\$.09 Option 1 per square foot  
\$.26 Option 2 per square foot  
\$18.00 Option 3 per hour

\*Estimate – Contract approved on unit cost basis; refer to attachments.

**VARIOUS DEPARTMENTS, BOARDS AND AGENCIES: Lubricating Oil, Gear Oil, Grease, Transmission.**

Bids Rejected

**VARIOUS DEPARTMENTS, BOARDS AND AGENCIES: Lubricating Oil, Gear Oil, Grease, Transmission Alternate Bid.**

Crossfaith Ventures LC\* - \$350,750.00 Group 1  
Universal Lubricants LLC\* - \$220,464.05 Group 2  
Heathwood Oil Co Inc.\* - \$47,465.60 Group 3

\*Estimate – Contract approved on unit cost basis; refer to attachments.

**PUBLIC WORKS AND UTILITIES DEPARMENT/ FLEET AND FACILITIES: Transit Connect Van.**

Rusty Eck Ford\* - \$23,597.00 Base Bid  
\$ 179.00 Option 1  
\$.00 Option 2 Standard  
\$390.00 Option 3  
\$199.00 Option 4  
\$286.10 Option 5

\*Three (3) additional Vans at Same Unit Cost. Total Bid \$73,953.30

**POLICE DEPARTMENT/AIR SECTION: Purchase the main rotor hub assembly exchange and overhauled.**

E.M. Heli-Logistics Ltd.\* - \$52,000.00  
    \$250.00 Freight  
\$52,250.00 Total Bid

\*Purchases utilizing High Technology Items and Security Matters Contracts Ordinance No. 38-122 Section 2.64.020 (g) (k)

The Purchasing Division recommended that the contracts be awarded and/or deferred as outlined above, same being the lowest and best bid.

On motion, the Board recommended that the contracts be awarded and/or deferred as outlined above, same being the lowest and best bid.

On motion the Board of Bids adjourned.

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Martha Strayer, Administrative Assistant,  
Department of Public Works

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Janis Edwards, CMC  
Deputy City Clerk

# CITY COUNCIL PROCEEDINGS

JANUARY 24, 2012

## MINUTES OF THE MEETING OF THE CITY COUNCIL

Wichita, Kansas, January 24, 2012  
Tuesday, 09:30 AM

The City Council met in regular session with Carl Brewer, Michael O'Donnell, Janet Miller, Lavonta Williams, James Clendenin, and Jeff Longwell. Absent: Pete Meitzner.

Staff Members Present: Bob Layton, City Manager, Gary Rebenstorf Director of Law, and Janis Edwards Deputy City Clerk.

Mayor Brewer called the meeting to order at 9:35 a.m.

Approve the minutes of the regular meeting on January 10, 2012 and special meeting on January 18, 2012.

Carl Brewer moved to approve the minutes of the regular meeting on January 10, 2012 and special meeting on January 18, 2012.

Motion carried 6 to 0

### II. CONSENT AGENDAS (ITEMS 1 THROUGH 28)

Carl Brewer moved to approve Consent Agenda Items 1 through 28 in accordance with the recommended actions shown thereon.

Motion carried 6 to 0

### VIII. COUNCIL MEMBER AGENDA

1. Approval of travel expenses for Mayor Brewer, Vice Mayor Williams and City Council Members Meitzner, Clendenin, O'Donnell, Longwell, and Miller to attend the League of Kansas Municipalities City Hall Day in Topeka, KS, February 1 and 2, 2012.

Carl Brewer moved to approve the travel expenditures.

Motion carried 6 to 0

### IX. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

There were no Board Appointments made.

### RECESS

The City Council recessed into workshop.



## RECONVENE

The City Council reconvened at 10:30 a.m.

## RECESS - EXECUTIVE SESSION

Carl Brewer moved to consider preliminary discussions relating to the acquisition of real property for highway construction purposes and confidential data relating to the financial affairs or trade secrets of a business, in order to protect the privacy rights of the entity.

Motion carried 6 to 0

## RECONVENE

The City Council reconvened in the Board Room at 10:54 a.m. Mayor Brewer announced that no action was needed or taken as a result of the Executive Session.

Carl Brewer moved to close the Executive Session.

Motion carried 6 to 0

Carl Brewer moved to adjourn the meeting.

Motion carried 6 to 0

## ADJOURNMENT

The meeting adjourned at 10:55 a.m.

Respectfully submitted,

Janis Edwards, CMC  
Deputy City Clerk

## II. CITY COUNCIL CONSENT AGENDA ITEMS

### 1. Report of Board of Bids and Contracts

Attachment: [Board of Bids dated January 23, 2012](#)

### 2. Applications for Licenses to Retail Cereal Malt Beverages:

a.	Renewal	2012	(Consumption on Premises)
	Anastasia Ryan	Two Brothers BBQ**	3750 North Woodlawn SU 102
	Benjamin A Villar	Ben Villar's Mexican Restaurant**	1930 South Oliver
	Edwin S (Ned) Goyne	A.B. Sim Golf Course**	2020 West Murdock
	Chen Liu	Bai Wei**	1845 South Rock Road

	Renewal	2012	(Consumption off Premises)
	John A Mann	Walgreens #6006***	9525 East 21st North
	John A Mann	Walgreens #6362***	333 West 13th Street
	John A Mann	Walgreens #7147***	1555 South Broadway
	John A Mann	Walgreens #5770***	3150 South Seneca
	John A Mann	Walgreens #2750***	5555 South Broadway
	John A Mann	Walgreens #5768***	5505 East Harry

John A Mann	Walgreens #5793***	710 North West Street
John A Mann	Walgreens #6170***	555 North Maize Road
Lori Cottrell	Wal-Mart Stores #1221***	6110 West Kellogg

\*Consumption/Tavern less than 50% of gross revenues from sale of food.

\*\*General/Restaurant 50% or more gross revenue from sale of food.

\*\*\*Consumption/Retailer grocery stores, convenience stores etc.

3. Preliminary Estimates:

Attachment: [Preliminary Estimates](#)

4. Petitions for Public Improvements:

- a. Petitions for Street Paving, Storm Water Sewer, Sanitary Sewer, and Water Distribution Systems in Monarch Landing 3rd Addition, north of 21st, west of 159th Street East. (District II)

Attachment: [Agenda Report No. II-4a and CIPs](#)

Attachment: [Resolution No. 12-016](#)

Attachment: [Petitions](#)

Attachment: [Resolution No. 12-017](#)

Attachment: [Resolution No. 12-018](#)

Attachment: [Resolution No. 12-019](#)

5. Deeds and Easements:

- a. Deeds and Easements. (See Attached)

Attachment: [Agenda Report No. II-5a](#)

6. Statement of Costs:

- a. a. List of Statement of Cost. (See Attached)

Attachment: [II-6a Statement of Costs: Paving](#)

7. Consideration of Street Closures/Uses.

- a. Community Events - Intrust Bank Arena, World Wrestling Entertainment. (District I)

Attachment: [Agenda Report No. II-7a](#)

- b. Community Events - Intrust Bank Arena, George Strait. (District I)

Attachment: [Agenda Report No. II-7b](#)

8. Agreements/Contracts:

- a. I-235 By-Pass and 13th Street Floodway Crossing. (Districts V and VI)

Attachment: [Agenda Report No. II-8a](#)

Attachment: [Agreement](#)

- b. Agreements for the Installation of Railroad Signals. (Districts IV and VI)

Attachment: [Agenda Report No. II-8b](#)

Attachment: [Agreements](#)

- c. Supplemental Design Agreement No. 1 for 36th Street North from Arkansas Avenue to a turnaround east of Agnes Addition. (District V)

Attachment: [Agenda Report No. II-8c and Agreements](#)

- d. Contract for Consultant Services for Acquisition and Relocation: Improvement of Kellogg (US 54) from Cypress Street to Chateau Street. (District II)

Attachment: [Agenda Report No. II-8d](#)

Attachment: [Agreement](#)

9. Design Services Agreement:

- a. Agreement for Design Services for a Waterline to Serve Scenic Landscapes, north of Maple, east of Julia. (District V)

Attachment: [Agenda Report II-9a and Agreement](#)

- b. Agreement for Design Services for Paving Improvements in Monarch Landing 3rd Addition, north of 21st, west of 159th Street East. (District II)

Attachment: [Agenda Report No. II-9b and Agreement](#)

- c. Supplemental Agreement for Additional Design Services for 13th Street North from I-135 to Oliver. (District I)

Attachment: [Agenda Report No. II-9c and Agreement](#)

10. Property Acquisition:

- a. Acquisition of 13110 West Central Avenue for the Central: 119th to 135th Street Road Improvement Project. (District V)

Attachment: [Real Estate Purchase Agreement and Maps](#)

Attachment: [Agenda Report No. II-10a](#)

- b. Acquisition of Land for a Well Site along Willow Lake Road in Section 23, Township 24 South, Range 3 for the Integrated Local Water Supply Plan. (Harvey County)

Attachment: [Agenda Report No. II-10b](#)

Attachment: [Real Estate Purchase Agreement and Maps](#)

- c. Partial Acquisition of 1522 North 135th Street West for the 135th Street from 13th Street to 21st Street Improvement Project. (District V)

Attachment: [Agenda Report No. II-10c](#)

Attachment: [Real Estate Purchase Agreements and Maps](#)

- d. Partial Acquisition of 5942 North Broadway for the Wichita-Valley Center Flood Control Levee Certification and Rehabilitation Project. (District VI and County)

Attachment: [Real Estate Purchase Agreement and Maps](#)

Attachment: [Agenda Report No. II-10d](#)

11. Minutes of Advisory Boards/Commissions

- a. Board of Park Commissioners, November 21, 2011 Board of Park Commissioners, December 19, 2011 Stormwater Advisory Board, December 9, 2011

12. Repair or Removal of Dangerous and Unsafe Structures

Repair or removal of Dangerous and Unsafe Structures. (Districts I and VI)

Property Address	Council District
a. 1210 North Poplar	I
b. 1621 North Volutsia	I
c. 2615 / 2617 East Stadium (Duplex)	I
d. 1547 North Santa Fe	VI

Attachment: [Agenda Report No. II-12](#)

Attachment: [Supporting Documents](#)

Attachment: [Resolution Nos.](#)

13. Sale of Remnant Property adjacent to 8220 East Kellogg. (District II)

Attachment: [Agenda Report No. II-13](#)

Attachment: [Real Estate Contract and Map](#)

14. Proposed Assessment Rolls:

Proposed Assessment Rolls have been prepared for seven (7) paving projects and it is necessary to set a public hearing date. Informal hearing with Council personnel will be held February 13, 2012 at 11:00 a.m. Notification of both the informal and formal public hearings regarding the proposed special assessments will be mailed to affected property owners on February 3, 2012.

Attachment: [Agenda Report No. II-14](#)

15. Increased Expenditure Authority for the 2011 Budget.

Attachment: [Agenda Report No. II-15](#)

16. Budget Adjustment for the State Office Building Fund.

Attachment: [Agenda Report No. II-16](#)

17. Kansas School for Effective Learning, Inc. (KANSEL) Memorandum of Agreement (MOA) Renewal.

Attachment: [Agenda Report No. II-17](#)

Attachment: [KANSEL MOA Renewal](#)

18. Contracts and Agreements for December 2011.

Attachment: [Agenda Report No. II-18](#)

19. Amending Resolutions and Ordinance for Water System, Bridge and Street Paving Projects. (Districts III and V)

Attachment: [Agenda Report No. II-19](#)

Attachment: [Ordinance No. 49-195](#)

Attachment: [Resolution No. 12-020](#)

Attachment: [Resolution No. 12-021](#)

20. 21st and Woodlawn Emergency 24? Transmission Water Main Repair. (District II)

Attachment: [Agenda Report No. II-20](#)

Attachment: [Memo](#)

21. Nuisance Abatement Assessments.

Attachment: [Agenda Report No. II-21 and List for Special Assessments](#)

Attachment: [Ordinance No. 49-196](#)

22. Petition for Landscaping, Street Lighting and Irrigation Improvements for Berkley Square First Addition and Greenwich Office Park Second Addition and related easement and Agreement. (District II)

Attachment: [Agenda Report No. II-22](#)

Attachment: [Agreement](#)

Attachment: [Easement](#)

Attachment: [Lighting and Landscape](#)

Attachment: [Lighting](#)

Attachment: [Resolution No. 12-026](#)

Attachment: [Resolution No. 12-027](#)

23. Change Order No. 15 - ASR Recharge Well Support.

Attachment: [Agenda Report No. II-23 and Change Order](#)

24. Second Reading Ordinances:

List of Second Reading Ordinances.

Attachment: [II-24 Second Reading Ordinances](#)

## II. CONSENT PLANNING AGENDA ITEMS

25. \*ZON2011-00040 - Zone change from SF-5 Single-family Residential (?SF-5) to GC General Commercial (?GC?) subject to Protective Overlay (?P-O?) #262 on property generally located on the southwest corner of the intersection of South Meridian Avenue and West Merton Avenue, 1701 South Meridian. (District IV)

Attachment: [Agenda Report No. II-25](#)

Attachment: [Ordinance No. 49-197](#)

Attachment: [ZON2011-40 Background Information](#)

26. \*ZON2011-00041 ? City zone change from SF-5 Single-family Residential (?SF-5?) to GC General Commercial (?GC?) generally located east of Greenwich Road, north of Kellogg Street, on the southeast corner of Lewis and Ellson Streets. (District II)

Attachment: [Agenda Report No. II-26](#)

Attachment: [Ordinance No. 49-198](#)

Attachment: [ZON2011-41 Background Information](#)

## II. CONSENT AIRPORT AGENDA ITEMS

27. \*Capital Excel, Inc. - Supplemental Agreement No. 1 - Colonel James Jabara Airport.

Attachment: [Agenda Report No. II-27](#)

Attachment: [Capital Excel SA No 1](#)

28. \*Electrical and Communication Duct Banks, Phase II - Change Order No. 1 and Budget Adjustment - Wichita Mid-Continent Airport.

Attachment: [Agenda Report No. II-28](#)

Attachment: [Electrical Comm Duct Bank Ph II CO1 - Shelley Electric](#)

Monday, March 12, 2012

Decision of the Board of Bids on FB 130274 group 1

The Board of Bids has before it a protest from Universal Lubricants, LLC to the award of contract on FB 130274 group 1. Universal had the lowest bid, but its bid documents were found to be non-responsive. To alter the prior award of contract to the other bidder, the board of bids must find the response of Universal to have been responsive as presented on December 30, 2011.

Universal raised policy arguments relating to protection of assets by measured oil change interval increases. Similarly, the City Public Works department raised policy arguments relating to overall operational costs. While the Board finds both arguments to be of value, they are not material to the decision this body must make.

This Board does not feel it has the expertise to determine the extent to which the stated variances from the Comparison of Typical Properties found in the specifications are materially important, and gives such deviations little weight in its decision.

The specifications did not call for a specific change interval, but did require an extended warranty. The warranty offered by the bidder awarded the contract ran to a change interval of double the current practice. The limited warranty offered by Universal was based on stair-stepped change intervals, was not quantified, and was expressly subject to further engineering analysis and approval. Therefore, not only was improvement not warranted by Universal, it was not promised to be warranted.

Lastly, the Board notes that Universal takes issue with the specification "equal to Mobile 1" in group 1, yet Universal received the bid for group 2, which called out specifications in the same fashion in several of the line items awarded.

Therefore, the Board of Bids affirms the initial award for group 1 on FB 130274. Universal may further protest this decision in writing within five days to Catherine Holdeman, Assistant City Manager. If desired, the City would agree the next step could be bypassed and allow, in the same timeframe, appeal to the City Council.

Martin J. Stays

Elizabeth Holton Wade

911114

Fanny Chan

CL Jan



March 28, 2012

Universal Lubricants, LLC  
Attn: Mr. Mike Maloney, Jr.  
2824 N. Ohio  
Wichita, KS 67201

Re: Contract FB 130274 Group 1

Dear Mr. Maloney:

In our telephone conference on March 28, 2012 you requested the financial staff analysis presented to the Board of Bids by Jay Newton in support of the selection of a different bidder for Group I of Contract FB130274. This information was noted by that Board as data that "was not material to the decision this body must make." The Board of Bids went on to set out the specific reasons for its decision, already provided to you in writing.

It would not be beneficial to cloud the City Council's review of the Board of Bids' decision with a discussion of factors which did not play a part in that decision. Therefore, the calculations and arguments of Mr. Newton on this point will not be recreated.

I remind you of your opportunity to present arguments, limited to 10 minutes, as agreed, to the City Council on April 17, 2012. The matter will be heard as soon after 9:00 a.m. as is reasonably possible.

Very truly yours,

Jay C. Hinkel,  
Deputy City Attorney

JCH/mjc

cc: Catherine Holdeman  
Alan King

**Department of Law**

Gary E. Rebenstorf, Director of Law and City Attorney  
Jay C. Hinkel, Deputy City Attorney

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**City of Wichita  
City Council Meeting  
April 17, 2012**

**TO:** Mayor and City Council Members

**SUBJECT:** Wichita Employees' Retirement and Police and Fire Retirement Systems  
Actuarial Valuation Reports as of December 31, 2011

**INITIATED BY:** Department of Finance

**AGENDA:** New Business

---

**Recommendations:** Receive and file the Actuarial Reports and approve the 2013 employer contribution rates.

**Background:** The Board of Trustees for both the Wichita Employees' Retirement (WER) System and the Police and Fire (P&F) Retirement System employ Milliman, Inc. to serve as technical advisor/consultant, supplying the Boards with required actuarial services and information pertaining to the Retirement Systems. The actuary recommends the mortality, interest rates, and other required actuarial tables; prepares an annual valuation of assets and liabilities; makes an annual determination of the amount of contributions necessary to meet requirements for annuities and benefits, certifying the results to the Boards; and reviews the operating experience of the Retirement Systems as an evaluation of the adequacy of the recommended actuarial standards.

**Analysis:** The funding objective of the WER and P&F Retirement Systems is to establish and receive contributions, expressed as percents of active member pensionable payroll, which will remain approximately level from year to year, minimizing increases for future generations of citizens. This funding objective should be attainable, as long as the benefits and the demographic make-up of members does not change materially, and actuarial assumptions are realized. The Retirement Systems are supported by: (1) member contributions; (2) City contributions; and (3) investment income from the Retirement Systems' assets. Key results of the actuarial valuations are summarized below.

1. The actuary's valuations state that for the fiscal year beginning January 1, 2013, the City's required contribution to the WER System is 12.6% and the required contribution to the P&F System is 22.8%. Contribution rates are stated as a percent of active member pensionable payroll. These rates are based on the benefit provisions and active member contribution rates in effect on December 31, 2011. Of the total dollar amount contributed to WER, 4.7% of the City contributions for Plan 3 (a defined contribution plan) are allocated to Plan 3 individual members' accounts.
2. The funded ratios (liabilities covered by assets) and employer (City) contribution rates for the WER and P&F Retirement Systems over the past five (5) years are shown below:

**Wichita Employees' Retirement System**

Period Ending 12/31	Budget Year	Funded Ratio	<u>Employer Contributions</u>	
			<u>Pension Trust</u>	<u>Pension Reserve</u>
2007	2009	110.5%	4.7%	0.8%
2008	2010	100.1%	8.4%	0.0%
2009	2011	96.3%	10.2%	0.0%
2010	2012	95.5%	10.6%	0.0%
2011	2013	92.5%	12.6%	0.0%

Police and Fire Retirement System

<u>Period</u> <u>Ending 12/31</u>	<u>Budget</u> <u>Year</u>	<u>Funded</u> <u>Ratio</u>	<u>Employer Contributions</u>	
			<u>Pension</u> <u>Trust</u>	<u>Pension</u> <u>Reserve</u>
2007	2009	102.7%	17.5%	0.0%
2008	2010	95.1%	20.8%	0.0%
2009	2011	92.4%	22.0%	0.0%
2010	2012	92.7%	22.0%	0.0%
2011	2013	90.8%	22.8%	0.0%

3. In summary, the actuary's reports reflect that the aggregate experience of the Retirement Systems during the twelve (12) months ended December 31, 2011 resulted in a net loss for WER and P&F, due mainly to the negative investment experience which was deferred and carried over from 2008, combined with the 2011 investment experience, which was below the actuarial investment return assumption of 7.75%. These losses were offset slightly by positive experience on system liabilities. The actual market value return for 2011 was .4%. Despite strong returns in 2009 and 2010, the deferred losses from 2008 and 2011 resulted in an increase of 2.0% in the City's required contribution rate for 2013 for WER and an increase of .8% for P&F.

**Financial Considerations:** In conjunction with the actuary's recommendation and in keeping with the City's current policy of maintaining level contribution rates, the City's contribution rates, expressed as a percent of active member pensionable payroll, are increased from 10.6% to 12.6% for WER, and increased from 22.0% to 22.8% for P&F for the fiscal year 2013.

**Goal Impact:** The Internal Perspective Goal is impacted through the fair presentation of the financial condition of the City's pension systems to the City Council, the citizens of Wichita, plan participants and other interested parties.

**Legal Considerations:** Under the Ordinances creating the two pension systems, the City is required to make the actuarially required contributions to the Retirement Systems.

**Recommendation/Actions:** It is recommended that the City Council receive and file the Wichita Employees' Retirement and Police and Fire Retirement Systems' Actuarial Valuation Reports as of December 31, 2011 as submitted, and approve the 2013 employer retirement fund contribution rates.

**Attachments:** Wichita Employees' Retirement System Actuarial Valuation Report as of December 31, 2011 and Police and Fire Retirement System of Wichita, Kansas, Actuarial Valuation Report as of December 31, 2011.

## **Wichita Employees' Retirement System**

**Actuarial Valuation as of December 31, 2011**

Prepared by:  
**Milliman, Inc.**

**William V. Hogan, FSA, MAAA**  
Principal & Consulting Actuary

**Timothy J. Herman, FSA, MAAA**  
Consulting Actuary

April 3, 2012

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**Wichita Employees' Retirement System**  
**Actuarial Valuation Report as of December 31, 2011**

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April 3, 2012

The Board of Trustees  
Wichita Employees' Retirement System  
City Hall, 12<sup>th</sup> Floor  
455 North Main Street  
Wichita, Kansas 67202

Dear Members of the Board:

At your request, we have performed an annual actuarial valuation of the Wichita Employees' Retirement System as of December 31, 2011 for determining the contribution rate for fiscal year 2013. The major findings of the valuation are contained in this report. This report reflects the benefit provisions in effect as of December 31, 2011. There were no changes in the actuarial methods or assumptions from the prior valuation.

In preparing this report, we relied, without audit, on information (some oral and some written) supplied by the System's staff. This information includes, but is not limited to, plan provisions, member data and financial information. In our examination of these data, we have found them to be reasonably consistent and comparable with data used for other purposes. Since the valuation results are dependent on the integrity of the data supplied, the results can be expected to differ if the underlying data is incomplete or missing. It should be noted that if any data or other information is inaccurate or incomplete, our calculations may need to be revised.

On the basis of the foregoing we hereby certify that, to the best of our knowledge and belief, this report is complete and accurate and has been prepared in accordance with generally recognized and accepted actuarial principles and practices which are consistent with the principles prescribed by the Actuarial Standards Board (ASB) and the Code of Professional Conduct and Qualification Standards for Public Statements of Actuarial Opinion of the American Academy of Actuaries.

We further certify that all costs, liabilities, rates of interest and other factors for the System have been determined on the basis of actuarial assumptions and methods which are individually reasonable (taking into account the experience of the System and reasonable expectations of future experience); and which, in combination, offer our best estimate of anticipated experience affecting the System. Nevertheless, the emerging costs will vary from those presented in this report to the extent actual experience differs from that projected by the actuarial assumptions. The Board of Trustees has the final decision regarding the appropriateness of the assumptions and adopted them as outlined in Appendix C.

Future actuarial measurements may differ significantly from the current measurements presented in this report due to such factors as the following: plan experience differing from that anticipated by the economic or demographic assumptions; changes in economic or demographic assumptions; increases or decreases expected as part of the natural operation of the methodology used for these measurements (such as the end of an amortization period or additional cost or contribution requirements based on the System's funded status); and changes in plan provisions or applicable law. Due to the limited scope of our assignment, we did not perform an analysis of the potential range of future measurements.

Actuarial computations presented in this report are for purposes of determining the actuarial contribution rates for funding the System. Actuarial computations presented in this report under GASB Statements No. 25, 27, and 50 are for purposes of fulfilling financial accounting requirements. The computations prepared for these two purposes may differ as disclosed in our report. The calculations in the enclosed report have been made on a basis consistent with our understanding of the System's funding requirements and goals, and of GASB Statements No. 25, 27, and 50. Determinations for purposes other than these requirements may be significantly different from the results contained in this report. Accordingly, additional determinations may be needed for other purposes.

Milliman's work product was prepared exclusively for the Wichita Employees' Retirement System of Wichita, Kansas for a specific and limited purpose. It is a complex, technical analysis that assumes a high level of knowledge concerning the Wichita Employees' Retirement System of Wichita, Kansas operations, and uses data from the Wichita Employees' Retirement System of Wichita, Kansas, which Milliman has not audited. It is not for the use or benefit of any third party for any purpose. Any third party recipient of Milliman's work product who desires professional guidance should not rely upon Milliman's work product, but should engage qualified professionals for advice appropriate to its own specific needs.

Any distribution of the enclosed report must be in its entirety including this cover letter, unless prior written consent is obtained from Milliman, Inc. This report has been prepared in accordance with the terms and provisions of the Consulting Services Agreement effective August 15, 2007.

We would like to express our appreciation to Barbara Davis, Pension Manager, and to members of her staff, who gave substantial assistance in supplying the data on which this report is based.

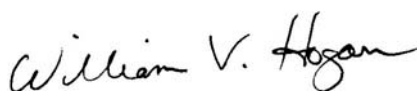
I, William V. Hogan, FSA, am an actuary for Milliman, Inc. I am a member of the American Academy of Actuaries and a Fellow of the Society of Actuaries, and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

I, Timothy J. Herman, FSA, am an actuary for Milliman, Inc. I am a member of the American Academy of Actuaries and a Fellow of the Society of Actuaries, and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

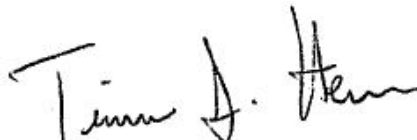
We herewith submit the following report and look forward to discussing it with you.

Respectfully Submitted,

Milliman, Inc.



William V. Hogan, FSA, MAAA  
Principal and Consulting Actuary



Timothy J. Herman, FSA, MAAA  
Consulting Actuary

WVH/TJH/cw

## Section 1

### Board Summary

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#### OVERVIEW

This report presents the results of the December 31, 2011 actuarial valuation of the Wichita Employees' Retirement System (WER). The primary purposes of performing a valuation are to:

- estimate the liabilities for the benefits provided by the System,
- determine the employer contribution rates required to fund the System on an actuarial basis,
- disclose certain asset and liability measures as of the valuation date,
- monitor any deviation between actual plan experience and experience projected by the actuarial assumptions, so that recommendations for assumption changes can be made when appropriate,
- analyze and report on any significant trends in contributions, assets and liabilities over the past several years.

All new employees hired by the City participate in Plan 3 (a defined contribution plan) for the first seven years. After seven years, the member makes an election to either remain in the defined contribution plan or move to Plan 2 (a defined benefit plan). The members that elect to remain in the defined contribution plan are referred to as Plan 3b members in this report. This report is intended to value assets and liabilities only for employees who are members of the defined benefit plans (Plan 1 and 2) or Plan 3 members who will have the right to elect such coverage in the future. Therefore, the member data, liability and asset values shown in this report exclude Plan 3b members (those who have elected to remain in the defined contribution plan).

There were no changes in the benefit provisions, actuarial assumptions, or actuarial methods from the last valuation.

In the 2010 valuation, actuarial assets were lower than actuarial liability, so there was an unfunded actuarial liability of \$24.1 million. The 2011 valuation shows a large increase to the unfunded actuarial liability of \$17.8 million for a total of \$41.9 million (actuarial liability exceeds actuarial assets). A detailed analysis of the change in the unfunded actuarial liability/(surplus) from December 31, 2010 to December 31, 2011 is shown on page 3. The actuarial valuation results provide a "snapshot" view of the Plan's financial condition on December 31, 2011. The valuation results reflect net unfavorable experience for the past plan year as demonstrated by an unfunded actuarial liability that was higher than expected based on the actuarial assumptions used in the December 31, 2010 actuarial valuation. Unfavorable experience on the actuarial value of assets resulted in a loss of \$18.2 million and favorable experience on liabilities resulted in a gain of \$1.2 million. Net experience was an actuarial loss of \$17.0 million.

The Plan uses an asset smoothing method in the valuation process. As a result, the plan's funded status and the actuarial contribution rate are based on the actuarial (smoothed) value of assets – not the market value. On a market value basis, the rate of investment return was 0.4% in 2011. Because this is less than the actuarially assumed rate of return of 7.75%, it is considered to be an actuarial loss on investments. Under the asset smoothing method used in the valuation process, a portion of this investment loss is deferred to future years. Primarily because of this investment loss in 2011, the deferred (unrecognized) investment loss increased from \$36 million in the December 31, 2010 valuation to \$54 million in the December 31, 2011 valuation. Actual returns over the next few years will determine if and how, the \$54 million of deferred investment loss is recognized. For example, a return of 19% on the market value of assets in 2012 would be necessary to attain a return of 7.75% on the actuarial value of assets and offset the recognition of prior deferred losses in 2012.

In the following pages the change in the assets, liabilities, and contributions of the Plan over the last year are discussed in more detail.

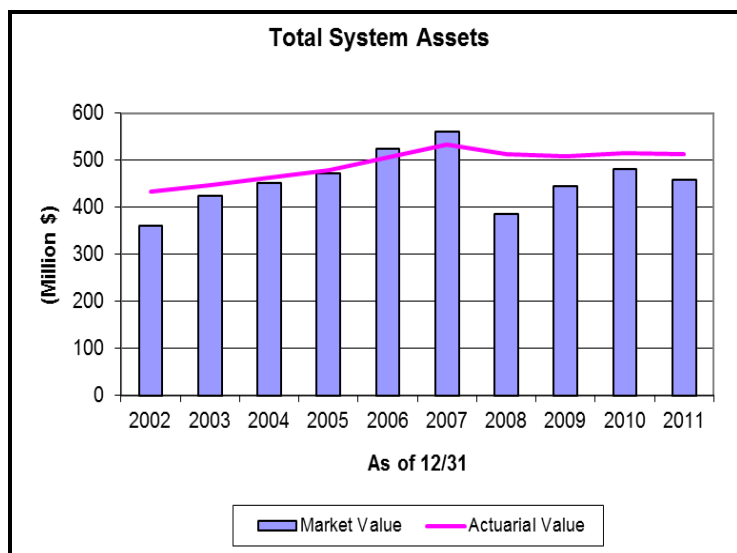
## ASSETS

As of December 31, 2011, the System had total assets, when measured on a market value basis, of \$459 million. This was a decrease of \$22 million from the December 31, 2010 figure of \$481 million. The market value of assets is not used directly in the calculation of the City's contribution rate. An asset valuation method, which smoothes the effect of market fluctuations, is used to determine the value of assets used in the valuation, called the "actuarial value of assets". The actuarial value of assets is equal to the expected value (calculated using the actuarial assumed rate of 7.75%) plus 25% of the difference between the market and expected value. See Table 3 on page 12 for a detailed development of the actuarial value of assets. The rate of return on the actuarial value of assets was 4%. Due to less than expected return on the market value of assets on average over the past 4 years, the actuarial value of assets remains 12% higher than the actual market value.

The components of the change in the market and actuarial value of assets for the Retirement System (in millions) are set forth below:

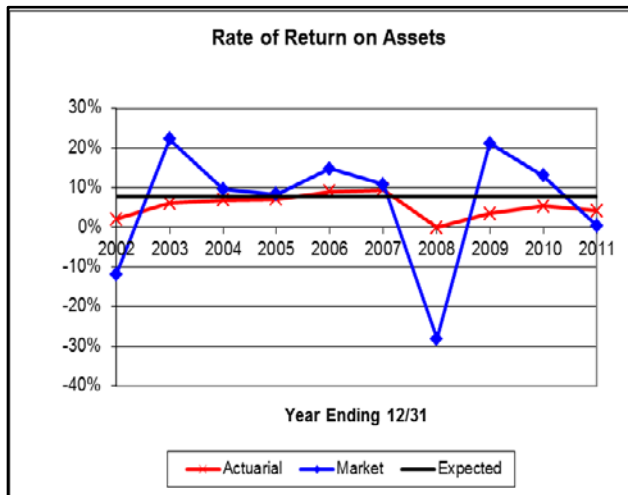
	Market Value (\$M)	Actuarial Value (\$M)
Assets, December 31, 2010	\$480.7	\$516.3
▪ City and Member Contributions	11.3	11.3
▪ Benefit Payments, Refunds and Transfers	(35.3)	(35.3)
▪ Investment Income (net of expenses)	2.1	21.0
Assets, December 31, 2011	\$458.8	\$513.3

The unrecognized investment losses represent about 12% of the market value of assets. Unless offset by future investment gains or other favorable experience, the recognition of the \$54 million loss is expected to have an impact on the future funded ratio and actuarial contribution requirement. If the deferred losses were recognized immediately in the actuarial value of assets, the funded percentage would decrease from 93% to 83% and the actuarially determined contribution rate would increase from 12.6% to 17.9%.



*The actuarial value of assets has both been greater than and less than the market value of assets during this period, which is expected when using a smoothing method.*





*The rate of return on the actuarial value of assets has been less volatile than the market value return, which is the main reason for using an asset smoothing method.*

## LIABILITIES

The actuarial liability is that portion of the present value of future benefits that will not be paid by future employer normal costs or member contributions. The difference between this liability and asset values at the same date is referred to as the unfunded actuarial liability (UAL), or (surplus) if the asset value exceeds the actuarial liability. The unfunded actuarial liability will be reduced if the employer's contributions exceed the employer's normal cost for the year, after allowing for interest earned on the previous balance of the unfunded actuarial liability. Benefit improvements, experience gains and losses, and changes in actuarial assumptions and procedures will also impact the total actuarial liability and the unfunded portion thereof.

The Actuarial Liability and Unfunded Actuarial Liability for the System are:

Actuarial Liability	\$555,173,723
Actuarial Value of Assets	513,298,382
Unfunded Actuarial Liability/(Surplus)	41,875,341

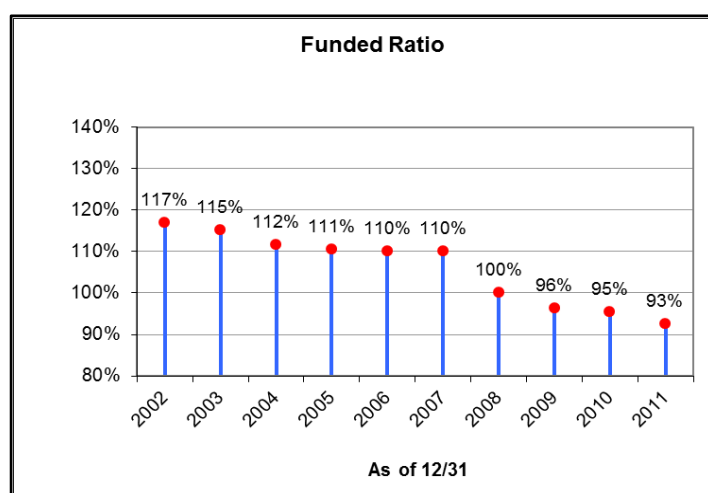
Between December 31, 2010 and December 31, 2011, the change in the unfunded actuarial liability for the System was as follows (in millions):

Change in Unfunded Actuarial Liability	\$(M)
UAL, December 31, 2010	\$24.1
+ Normal cost for year	9.9
+ Assumed investment return for year	2.6
- Actual contributions (member + City)	11.3
- Assumed investment return on contributions	.4
= Expected Unfunded Actuarial Liability, December 31, 2011	24.9
+ Change from amendments	0.0
+ Change from assumption changes	0.0
= Expected UAL after changes	24.9
Actual UAL, December 31, 2011	41.9
Experience gain/(loss) (Expected UAL – Actual UAL)	\$ (17.0)

The experience loss for the 2011 plan year of \$17.0 million reflects the combined impact of an actuarial loss of about \$18.2 million on System assets (actuarial value), and an actuarial gain of about \$1.2 million on System liabilities.

Analysis of the unfunded actuarial liability strictly as a dollar amount can be misleading. Another way to evaluate the unfunded actuarial liability and the progress made in its funding is to track the funded status, the ratio of the actuarial value of assets to the actuarial liability. This information for recent years is shown below (in millions). Historical information is shown in the graph following the chart.

	12/31/07	12/31/08	12/31/09	12/31/10	12/31/11
Actuarial Liability (\$M)	\$483.4	\$512.4	\$529.3	\$540.4	\$555.2
Actuarial Value of Assets (\$M)	\$533.9	\$512.9	\$509.5	\$516.3	\$513.3
Funded Ratio (Actuarial Value)	110.5%	100.1%	96.3%	95.5%	92.5%
Funded Ratio (Market Value)	115.8%	75.3%	84.0%	88.9%	82.6%



*The funded ratio has declined over the last decade due to various reasons including benefit improvements, assumption changes and most significantly, investment experience. There are still deferred investment losses that will be recognized in future years, absent investment returns above the 7.75% assumption. Without these gains, the funded ratio will continue to decline toward the market value percentage shown above.*

As mentioned earlier in this report, due to the asset smoothing method there is currently about a \$54 million difference between the actuarial value and the market value of assets. To the extent there is not favorable investment experience to offset the deferred losses, the \$54 million loss will be recognized in future years and the System's funded status will decline. The System's funded status in future years will be heavily dependent on actual investment returns.

## CONTRIBUTION RATES

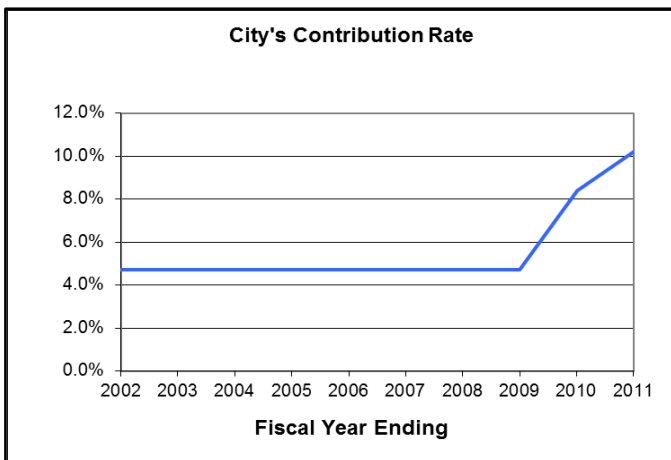
Generally, contributions to the System consist of:

- a "normal cost" for the portion of projected liabilities allocated to service of members during the year following the valuation date, by the actuarial cost method, and
- an "unfunded actuarial liability or (surplus) contribution" for the excess of the portion of projected liabilities allocated to service to date over the actuarial value of assets.

Contribution rates are computed with the objective of developing costs that are level as a percentage of covered payroll. The contribution rate for fiscal year 2013 is based on the December 31, 2011 actuarial valuation results.

As of December 31, 2011, the actuarial liability exceeds the actuarial value of assets. The resulting unfunded actuarial liability, when amortized over a 20-year rolling period, results in an amortization cost of 4.1% of pay. The contribution rate is the sum of the employer portion of the normal cost rate and the amortization cost. This valuation indicates the City's contribution rate to be 12.6% of pay (8.5% employer normal cost rate plus 4.1% unfunded actuarial liability contribution).

A summary of the City's historical contribution rate for the System is shown below:



*The City's Contribution Rate will be 10.6% and 12.6% for the Fiscal Year Ending 12/31/2012 and 12/31/2013, respectively.*

## COMMENTS

The stock market losses in 2008 are still impacting most public retirement plans. Favorable investment returns in 2009 and 2010 have helped alleviate some of the 2008 losses. However, the 2011 return of 0.4% has resulted in a setback to this improvement. The System utilizes an asset smoothing method to smooth out the peaks and valleys of investment returns. Under the asset smoothing method, the actuarial value of assets is determined as 75% of the expected value (using the 7.75% actuarial assumed rate of return) and 25% of actual market value. Due to the use of an asset smoothing method, the December 31, 2011 valuation reflected a return on the actuarial value of assets of 4%.

The deferred investment loss has grown considerably since last year. Given the size of the remaining deferred investment loss (\$54M), the System's funded status could decrease and the actuarial contribution rate increase in future valuations absent favorable experience to offset the impact of the deferred losses. The City should be prepared for still higher contribution rates in the next few years, and perhaps longer, depending on future rates of return. As mentioned above, favorable asset returns in 2009 and 2010 have helped stabilize this issue; however, the 0.4% return on market value in 2011 created a larger deferred investment loss.

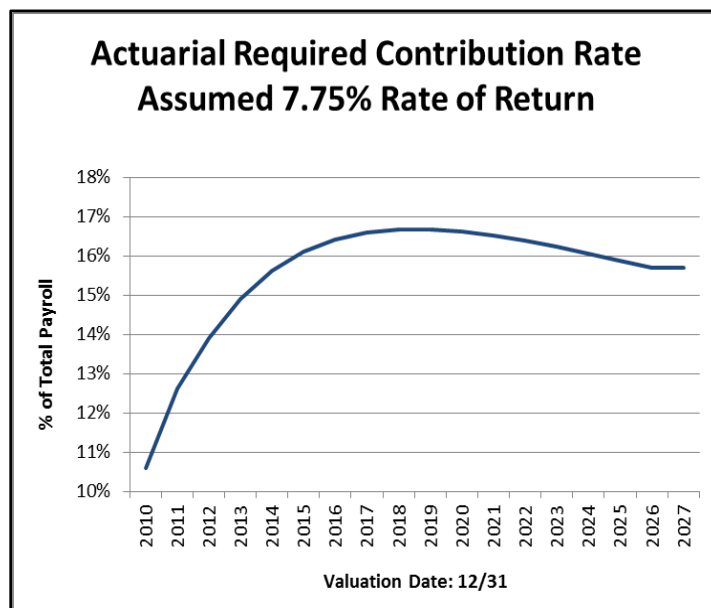
While the use of an asset smoothing method is a common procedure for public retirement systems, it is important to identify the potential impact of the deferred (unrecognized) investment experience. The key valuation results from the December 31, 2011 actuarial valuation are shown on the following page using both the actuarial value of assets and the pure market value.

	Using Actuarial Value of Assets	Using Market Value of Assets
Actuarial Liability	\$555,173,723	\$555,173,723
Asset Value	513,298,382	458,827,503
Unfunded Actuarial Liability	41,875,341	96,346,220
Funded Ratio	92.5%	82.6%
Normal Cost Rate	13.2%	13.2%
UAL Contribution Rate	<u>4.1%</u>	<u>9.4%</u>
Total Contribution Rate	17.3%	22.6%
Employee Contribution Rate	<u>(4.7%)</u>	<u>(4.7%)</u>
Employer Contribution Rate	12.6%	17.9%

The asset smoothing method impacts only the timing of recognizing the actual market experience on the assets. Due to deferred investment experience from 2008 and 2011, the actuarial value of assets exceeds the market value by 12%, despite strong returns in 2009 and 2010. If there are not higher returns than 7.75% consistently over the next few years, the \$54 million of deferred investment experience will be recognized and the ultimate impact on the employer contribution rate can be expected to be similar to the column shown above using market value of assets.

The City offered an early retirement window in 2011 for eligible employees. While the pension benefits of the System were not changed in the window, there were a larger number of retirees than expected. The net result was a slight liability gain and a reduction in covered payroll. The reduction in covered payroll also resulted in an increase in the employer contribution rate to amortize the Unfunded Actuarial Liability (UAL).

The following graph shows the expected increase in the employer contribution rate in future years if 7.75% is earned in all future years and the full actuarial contribution rate is made by the City in all future years.



*The projected Actuarial Required Contribution rate increased approximately 2% over the projection period from the 12/31/2010 report. This is due mainly to the decrease in covered payroll, which increased the amortization of the Unfunded Actuarial Liability (UAL).*

## SUMMARY OF PRINCIPAL RESULTS

	12/31/2011 Valuation	12/31/2010 Valuation	% Change
<b>1. PARTICIPANT DATA</b>			
Number of:			
Active Members			
Plan 1	2	7	(71.4)%
Plan 2	901	976	(7.7)%
Plan 3 (excluding Plan 3b)	611	661	(7.6)%
Total	1,514	1,644	(7.9)%
DROP Members			
Plan 1	29	54	(46.3)%
Plan 2	15	17	(11.8)%
Total	44	71	(38.0)%
Retired Members and Beneficiaries	1,310	1,193	9.8%
Inactive Vested Members	146	134	9.0%
Total Members	3,014	3,042	(0.9)%
Annual Valuation Payroll of Active Members (Including DROP)			
Plan 1	\$ 1,784,308	\$ 3,588,075	(50.3)%
Plan 2	46,221,547	50,519,542	(8.5)%
Plan 3	23,270,960	25,068,004	(7.2)%
Total	\$ 71,276,815	\$ 79,175,621	(10.0)%
Annual Retirement Payments for Retired Members and Beneficiaries	\$ 32,885,454	\$ 29,855,835	10.1%
<b>2. ASSETS AND LIABILITIES</b>			
Total Actuarial Liability	\$ 555,173,723	\$ 540,435,713	2.7%
Market Value of Assets	458,827,503	480,691,409	(4.5)%
Assets for Valuation Purposes	513,298,382	516,307,845	(0.6)%
Unfunded Actuarial Liability/(Surplus)	\$ 41,875,341	\$ 24,127,868	73.6%
Funded Ratio	92.5%	95.5%	(3.2)%
<b>3. EMPLOYER CONTRIBUTION RATES AS A PERCENT OF PAYROLL</b>			
Normal Cost	13.2%	13.3%	(0.8)%
Member Financed	4.7%	4.8%	(2.1)%
Employer Normal Cost	8.5%	8.5%	0.0%
Amortization of Unfunded Actuarial Liability or (Surplus)	4.1%	2.1%	95.2%
Employer Contribution Rate	12.6%	10.6%	18.9%

## Section 2

### Scope of the Report

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This report presents the actuarial valuation of the Wichita Employees' Retirement System (WER) as of December 31, 2011. This valuation was prepared at the request of the System's Board of Trustees.

Please pay particular attention to our cover letter, where the guidelines employed in the preparation of this report are outlined. We also comment on the sources and reliability of both the data and the actuarial assumptions upon which our findings are based. Those comments are the basis for our certification that this report is complete and accurate to the best of our knowledge and belief.

A summary of the findings resulting from this valuation is presented in the previous section. Section 3 describes the assets and investment experience of the System. Sections 4 and 5 describe how the obligations of the System are to be met under the actuarial cost method in use. Section 6 includes the information required for the financial reporting standards established by the Governmental Accounting Standards Board (GASB).

This report includes several appendices:

- Appendix A Schedules of valuation data classified by various categories of members.
- Appendix B A summary of the current benefit structure, as determined by the provisions of governing law on the valuation date.
- Appendix C A summary of the actuarial methods and assumptions used to estimate liabilities and determine contribution rates.
- Appendix D A glossary of actuarial terms.

## Section 3

### Assets

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In many respects, an actuarial valuation can be thought of as an inventory process. The inventory is taken as of the actuarial valuation date, which for this valuation is December 31, 2011. On that date, the assets available for the payment of benefits are appraised. The assets are compared with the liabilities of the System. The actuarial process then leads to a method of determining the contributions needed by members and the employer in the future to balance the System assets and liabilities.

#### Market Value of Assets

The current market value represents the “snapshot” or “cash-out” value of System assets as of the valuation date. In addition, market values of assets provide a basis for measuring investment performance from time to time. At December 31, 2011, the market value of assets for the System, excluding Plan 3b assets for members who have elected to remain in Plan 3, was \$459 million. Table 1 is a comparison, at market values, of System assets as of December 31, 2010, and December 31, 2011, in total and by investment category. Table 2 summarizes the change in the market value of assets from December 31, 2010 to December 31, 2011.

#### Actuarial Value of Assets

Neither the market value of assets, representing a “cash-out” value of System assets, nor the book values of assets, representing the cost of investments, may be the best measure of the System’s ongoing ability to meet its obligations.

To arrive at a suitable value for the actuarial valuation, a technique for determining the actuarial value of assets is used which dampens swings in the market value while still indirectly recognizing market values. This methodology, first adopted for the December 31, 2002 valuation, smoothes market experience by recognizing 25% of the difference between expected value (based on the actuarial assumption) and market value. Table 3 shows the development of the actuarial value of assets (AVA) as of December 31, 2011.

**TABLE 1**  
**Analysis of Net Assets at Market Value**

	As of December 31, 2011		As of December 31, 2010	
	<u>Amount</u> <u>(\$ Millions)</u>	<u>% of</u> <u>Total</u>	<u>Amount</u> <u>(\$ Millions)</u>	<u>% of</u> <u>Total</u>
Cash and Equivalents	\$ 0.2	0.0 %	\$ 0.1	0.0 %
Government Securities	30.0	6.7	36.1	7.8
Corporate Debt	45.3	10.2	50.2	10.8
Mortgage Backed Securities	42.0	9.5	47.3	10.2
Pooled Funds	79.3	17.8	80.1	17.2
Domestic Equity	153.8	34.6	171.7	36.9
International Equity	69.4	15.6	78.0	16.8
Real Estate	15.7	3.5	13.9	3.0
Timber	4.7	1.1	0.0	0.0
Commodities	12.0	2.7	0.0	0.0
Securities Lending Collateral Pool	42.9	9.6	55.5	11.9
Other	0.2	0.1	0.3	0.1
Receivables	13.4	3.0	18.4	3.9
Liabilities	(64.3)	(14.5)	(86.3)	(18.5)
<b>Total Plans 1 and 2</b>	<b>\$ 444.6</b>	<b>100.0 %<sup>(1)</sup></b>	<b>\$ 465.3</b>	<b>100.0 %<sup>(1)</sup></b>
Plan 3 Assets				
Members Electing to Stay in Plan 3	\$ 3.8		\$ 3.6	
Other Plan 3 Members	14.3		15.3	
<b>Total Plan 3 and 3b</b>	<b>18.1</b>		<b>18.9</b>	
<b>Net Assets (Plans 1, 2, and 3)</b>	<b>\$ 462.7</b>		<b>\$ 484.2</b>	

<sup>(1)</sup> Numbers may not add to 100.0% due to rounding.



**TABLE 2**  
**Summary of Changes in Net Assets**  
**During Year Ended December 31, 2011**

(Market Value)

	Plans 1 & 2	Plan 3*	Total
1. Market Value of Assets as of December 31, 2010	\$ 465,349,979	\$ 15,341,430	\$ 480,691,409
2. Contributions:			
a. Members	\$ 2,537,440	\$ 1,099,193	\$ 3,636,633
b. City	6,596,124	1,099,193	7,695,317
c. Transfers	2,680,431	(2,860,444)	(180,013)
d. Total [2(a) + 2(b) + 2(c)]	\$ 11,813,995	\$ (662,058)	\$ 11,151,937
3. Investment Income:			
a. Interest and Dividends	\$ 12,990,112	\$ 416,229	\$ 13,406,341
b. Net Depreciation in Fair Value	(8,540,380)	(197,540)	(8,737,920)
c. Commission Recapture	27,311	895	28,206
d. Net Securities Lending Income	195,407	6,192	201,599
e. Total [3(a) + 3(b) + 3(c) + 3(d)]	\$ 4,672,450	\$ 225,776	\$ 4,898,226
4. Expenditures:			
a. Refunds of Member Contributions	\$ 449,266	\$ 475,006	\$ 924,272
b. Benefits Paid:			
(1) Pension and Death Benefits	28,309,154	0	28,309,154
(2) DROP Payments	5,873,920	0	5,873,920
c. Administrative Expenses	507,646	126,185	633,831
d. Investment Expenses	2,102,027	70,865	2,172,892
e. Total [4(a) + 4(b) + 4(c) + 4(d)]	\$ 37,242,013	\$ 672,056	\$ 37,914,069
5. Net Change [2(d) + 3(e) - 4(e)]	\$ (20,755,568)	\$ (1,108,338)	\$ (21,863,906)
6. Market Value of Assets as of December 31, 2011 (1) + (5)	\$ 444,594,411	\$ 14,233,092	\$ 458,827,503

\* Excludes assets for Plan 3b members. The December 31, 2011 value of the assets for this group was \$3,826,417.

**TABLE 3**  
**Development of Actuarial Value of Assets**  
**as of December 31, 2011**

	<u>Plans 1 &amp; 2</u>	<u>Plan 3*</u>	<u>Total</u>
1. Actuarial Value of Assets as of December 31, 2010	\$ 500,087,605	\$ 16,220,240	\$ 516,307,845
2. Actual Contributions/Disbursements			
a. Contributions	\$ 9,133,564	\$ 2,198,386	\$ 11,331,950
b. Transfers	2,680,431	(2,860,444)	(180,013)
c. Benefit Payments and Refunds	(34,632,340)	(475,006)	(35,107,346)
d. Net (a + b + c)	\$ (22,818,345)	\$ (1,137,064)	\$ (23,955,409)
3. Expected Value of Assets as of December 31, 2011 $[(1) \times 1.0775] + [(2d) \times (1.0775)^5]$	\$ 515,158,337	\$ 16,297,005	\$ 531,455,342
4. Market Value of Assets as of December 31, 2011	\$ 444,594,411	\$ 14,233,092	\$ 458,827,503
5. Difference Between Market and Expected Values (4) - (3)	\$ (70,563,926)	\$ (2,063,913)	\$ (72,627,839)
6. Actuarial Value of Assets as of December 31, 2011 (3) + [(5) x 25%]	\$ 497,517,355	\$ 15,781,027	\$ 513,298,382
7. Actuarial Value of Assets/Market Value of Assets (6) / (4)	111.90%	110.88%	111.87%
8. Market Value of Assets less Actuarial Value of Assets (4) - (6)	\$ (52,922,944)	\$ (1,547,935)	\$ (54,470,879)

\* Excludes Plan 3b.

## Section 4

### System Liabilities

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In the previous section, an actuarial valuation was compared with an inventory process, and an analysis was given of the inventory of assets of the System as of the valuation date, December 31, 2011. In this section, the discussion will focus on the commitments of the System, which are referred to as its liabilities.

Table 4 contains an analysis of the actuarial present value of all future benefits (PVFB) for contributing members, inactive members, retirees and their beneficiaries.

The liabilities summarized in Table 4 include the actuarial present value of all future benefits expected to be paid with respect to each member. For an active member, this value includes the measurement of both benefits already earned and future benefits to be earned. For all members, active and retired, the value extends over benefits earnable and payable for the rest of their lives and for the lives of the surviving beneficiaries.

All liabilities reflect the benefit provisions in place as of December 31, 2011.

#### Actuarial Liability

A fundamental principle in financing the liabilities of a retirement program is that the cost of its benefits should be related to the period in which benefits are earned, rather than to the period of benefit distribution. An actuarial cost method is a mathematical technique that allocates the present value of future benefits into annual costs. In order to do this allocation, it is necessary for the funding method to “breakdown” the present value of future benefits into two components:

- (1) that which is attributable to the past and
- (2) that which is attributable to the future.

Actuarial terminology calls the part attributable to the past the “past service liability” or the “actuarial liability”. The portion allocated to the future is known as the present value of future normal costs, with the specific piece of it allocated to the current year being called the “normal cost”. Table 5 contains the calculation of actuarial liability for the System. The Entry Age Normal actuarial cost method is used to develop the actuarial liability.

**TABLE 4**  
**Present Value of Future Benefits (PVFB)**  
**as of December 31, 2011**

	<u><b>Plan 1</b></u>	<u><b>Plan 2</b></u>	<u><b>Plan 3</b></u>	<u><b>Total</b></u>
1. Active employees				
a. Retirement Benefit	\$ 679,118	\$ 186,755,237	\$ 39,635,066	\$ 227,069,421
b. Pre-Retirement Death Benefit	0	2,081,698	522,774	2,604,472
c. Withdrawal Benefit	0	11,586,713	6,205,629	17,792,342
d. Disability Benefit	0	4,953,510	1,487,449	6,440,959
e. Total	\$ 679,118	\$ 205,377,158	\$ 47,850,918	\$ 253,907,194
2. DROP Members				
a. DROP Account Balance	\$ 4,596,912	\$ 423,469	\$ 0	\$ 5,020,381
b. Monthly Retirement Benefit	14,518,644	4,763,335	0	19,281,979
c. Total	\$ 19,115,556	\$ 5,186,804	\$ 0	\$ 24,302,360
3. Inactive Vested Members	\$ 245,575	\$ 23,177,134	\$ 0	\$ 23,422,709
4. In Pay Members				
a. Disabled Members	\$ 1,619,649	\$ 1,785,655	\$ 0	\$ 3,405,304
b. Retirees	220,631,755	80,402,551	0	301,034,306
c. Beneficiaries	16,838,768	4,501,403	0	21,340,171
d. Total	\$ 239,090,172	\$ 86,689,609	\$ 0	\$ 325,779,781
5. Total PVFB				
(1e) + (2c) + (3) + (4d)	\$ 259,130,421	\$ 320,430,705	\$ 47,850,918	\$ 627,412,044

**TABLE 5**  
**Actuarial Liability**  
**as of December 31, 2011**

	<u>Plan 1</u>	<u>Plan 2</u>	<u>Plan 3</u>	<u>Total</u>
1. Active employees				
a. Present Value of Future Benefits	\$ 679,118	\$ 205,377,158	\$ 47,850,918	\$ 253,907,194
b. Present Value of Future Normal Costs	250,645	43,640,335	29,895,276	73,786,256
c. Actuarial Liability (1a) - (1b)	\$ 428,473	\$ 161,736,823	\$ 17,955,642	\$ 180,120,938
2. DROP Members	\$ 19,115,556	\$ 5,186,804	\$ 0	\$ 24,302,360
3. Inactive Vested Members	\$ 245,575	\$ 23,177,134	\$ 0	\$ 23,422,709
4. In Pay Members				
a. Disabled Members	\$ 1,619,649	\$ 1,785,655	\$ 0	\$ 3,405,304
b. Retirees	220,631,755	80,402,551	0	301,034,306
c. Beneficiaries	16,838,768	4,501,403	0	21,340,171
d. Total	\$ 239,090,172	\$ 86,689,609	\$ 0	\$ 325,779,781
5. Reserve for Plan 3 Members	\$ 0	\$ 0	\$ 1,547,935	\$ 1,547,935
6. Total Actuarial Liability (1c) + (2) + (3) + (4d) + (5)	\$ 258,879,776	\$ 276,790,370	\$ 19,503,577	\$ 555,173,723

TABLE 6

**Present Value of Accrued Benefits  
as of December 31, 2011**

The present value of accrued benefits for the System reflects the benefits earned based on service, earnings, and the System provisions as of the valuation date. It also reflects the on-going nature of the System by using the same actuarial assumptions as are used for funding purposes. Further, because the System provides that the accrued benefits of deferred vested members are indexed until benefits begin, the present value of the accrued benefit liability for active members reflects this provision from the assumed termination of employment to the assumed benefit commencement date.

	<u>Plan 1</u>	<u>Plan 2</u>	<u>Plan 3</u>	<u>Total</u>
1. Active Members	\$ 652,998	\$ 104,678,313	\$ 14,233,092	\$ 119,564,403
2. DROP Members	\$ 19,115,556	\$ 5,186,804	\$ 0	\$ 24,302,360
3. Inactive Vested Members	\$ 245,575	\$ 23,177,134	\$ 0	\$ 23,422,709
4. In Pay Members				
a. Disabled Members	\$ 1,619,649	\$ 1,785,655	\$ 0	\$ 3,405,304
b. Retirees	220,631,755	80,402,551	0	301,034,306
c. Beneficiaries	16,838,768	4,501,403	0	21,340,171
d. Total	\$ 239,090,172	\$ 86,689,609	\$ 0	\$ 325,779,781
5. Total	\$ 259,104,301	\$ 219,731,860	\$ 14,233,092	\$ 493,069,253
6. Market Value of Assets*	\$ 240,575,657	\$ 204,018,754	\$ 14,233,092	\$ 458,827,503
7. Funded Ratio (6)/(5)	93%	93%	100%	93%

\* Split of assets between Plan 1 and Plan 2 is in proportion to the liabilities for illustrative purposes only.

## Section 5

### Employer Contributions

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The previous two sections were devoted to a discussion of the assets and liabilities of the System. A comparison of Tables 3 and 4 indicates that current assets fall short of meeting the present value of future benefits (total liability). This is expected in all but a completely closed fund, where no further contributions are anticipated. In an active system, there will almost always be a difference between the actuarial value of assets and total liabilities. This deficiency has to be made up by future contributions and investment returns. An actuarial valuation sets out a schedule of future contributions that will deal with this deficiency in an orderly fashion.

The method used to determine the incidence of the contributions in various years is called the actuarial cost method. Under an actuarial cost method, the contributions required to meet the difference between current assets and current liabilities are allocated each year between two elements: (1) the normal cost rate and (2) the unfunded actuarial liability contribution rate.

The term “fully funded” is often applied to a system in which contributions at the normal cost rate are sufficient to pay for the benefits of existing employees as well as for those of new employees. More often than not, systems are not fully funded, either because of past benefit improvements that have not been completely funded or because of actuarial deficiencies that have occurred because experience has not been as favorable as anticipated. Under these circumstances, an unfunded actuarial liability (UAL) exists. Likewise, when the actuarial value of assets is greater than the actuarial liability, a surplus exists.

#### Description of Contribution Rate Components

The Entry Age Normal (EAN) actuarial cost method is used for the valuation. Under this method, the normal cost for each year from entry age to assumed exit age is a constant percentage of the member's year by year projected compensation. The portion of the present value of future benefits not provided by the present value of future normal costs is the actuarial liability. The unfunded actuarial liability/(surplus) represents the difference between the actuarial liability and the actuarial value of assets as of the valuation date. The unfunded actuarial liability is calculated each year and reflects experience gains/losses.

In general, contributions are computed in accordance with a level percent-of-payroll funding objective. The contribution rates based on this December 31, 2011 actuarial valuation will be used to determine employer contribution rates to the Wichita Employees' Retirement System for fiscal year 2013. In this context, the term “contribution rate” means the percentage, which is applied to a particular active member payroll to determine the actual employer contribution amount (i.e., in dollars) for the group.

As of December 31, 2011, the actuarial value of assets was less than the actuarial liability, resulting in an unfunded actuarial liability (UAL). The City's funding policy is to amortize the UAL over a rolling 20-year period. The amortization of the UAL is in addition to the employer normal cost rate.

#### Contribution Rate Summary

In Table 7, the amortization payment related to the unfunded actuarial liability, as of December 31, 2011, is developed. Table 8 develops the normal cost rate for the System. The derivation of the contribution rate for the City is shown in Table 9. Table 10 shows the historical summary of the City's contribution rates. Table 11 develops the experience gain/(loss) for the year ended December 31, 2011.

The rates shown in this report are based on the actuarial assumptions and cost methods described in Appendix C.

**TABLE 7**  
**Derivation of Unfunded Actuarial Liability Contribution Rate**

1. Actuarial Liability	\$	555,173,723
2. Actuarial Value of Assets	\$	513,298,382
3. Unfunded Actuarial Liability/(Surplus)	\$	41,875,341
4. Payment (Adjusted to Mid-Year) to Amortize Unfunded Actuarial Liability/(Surplus) Over 20 Years *	\$	2,980,317
5. Total Projected Payroll for the Year	\$	72,688,374
6. Amortization Payment as a Percent of Payroll		4.1%

\* The UAL is amortized as a level percent of payroll over a rolling 20-year period.



**TABLE 8**  
**Derivation of Normal Cost Rate**

Normal Cost at December 31, 2011		
Service pensions	\$	7,020,826
Disability pensions		275,881
Survivor pensions		112,626
Termination benefits		
- Deferred service pensions		864,343
- Return of member contributions		747,651
Total Normal Cost	\$	<u>9,021,327</u>
Covered Payroll for Members Under		
Certain Retirement Age	\$	68,394,001
Total Normal Cost Rate for Year		13.2%

TABLE 9

**Employer Contribution Rates for Fiscal Year Commencing in 2013**

	<b>Contribution Requirements as % of Payroll</b>	
Normal Cost		
Service pensions	10.2	%
Disability pensions	0.4	%
Survivor pensions	0.2	%
Termination benefits		
- Deferred service pensions	1.3	%
- Return of member contributions	1.1	%
Total Normal Cost	13.2	%
Unfunded Actuarial Liability		
Retired members and beneficiaries (1)	0.0	%
Active and former members (2)	4.1	%
Total UAL Contribution	4.1	%
Total Contribution Requirement		
Member Financed Portion (3)	4.7	%
City Financed Portion	12.6	%
Total	17.3	%

(1) Actuarial value of assets exceeds the actuarial liability for retirees and beneficiaries as of December 31, 2011.

(2) The unfunded actuarial liability is amortized as a level percent of active member payroll over a rolling 20-year period

(3) The weighted average of member contribution rates: 6.4% for Plan 1, 4.7% for Plan 2, and 4.7% for Plan 3.

TABLE 10

### Historical Summary of City Contribution Rates

Contribution rates are computed in accordance with a level percent of payroll funding objective. As of December 31, 2011, the actuarial value of assets is less than actuarial liabilities resulting in an unfunded actuarial liability (UAL). The UAL is amortized over a rolling 20-year period.

<u>Valuation Date</u>	<u>Fiscal Year</u>	City Contributions as Percents of Active Member Pensionable Payroll	
		<u>Funding Objective</u>	<u>Amortization Credit/Payment</u>
11/30/92	1994	9.5%	- %
11/30/93	1995	9.5	-
11/30/94	1996	9.4	-
12/31/95	1997	9.0	-
12/31/96	1998	6.9 – 8.4	(1.5)
12/31/97	1999	4.6 – 8.5	(3.9)
12/31/98	2000	0.8 – 8.3	(7.5)
12/31/99	2001	2.5 – 9.8	(7.3)
12/31/00	2002	0.5 – 9.7	(9.2)
12/31/01	2003	1.9 – 9.4	(7.5)
12/31/02	2004	2.7 – 8.8	(6.1)
12/31/03	2005	3.1 – 8.9	(5.8)
12/31/04	2006	3.5 – 8.2	(4.7)
12/31/05	2007	3.9 – 8.2	(4.3)
12/31/06	2008	4.2 – 8.3	(4.1)
12/31/07	2009	4.2 – 8.4	(4.2)
12/31/08	2010	8.4	0.0
12/31/09	2011	10.2	1.7
12/31/10	2012	10.6	2.1
12/31/11	2013	12.6%	4.1%

TABLE 11

## Derivation of System Experience Gain/(Loss)

	(\$M) Year Ended <u>12/31/11</u>
(1) UAL* at start of year	24.1
(2) + Normal cost for year	9.9
(3) + Assumed investment return on (1) & (2)	2.6
(4) - Actual contributions (member + City)	11.3
(5) - Assumed investment return on (4)	0.4
(6) = Expected UAL at end of year	24.9
(7) + Increase (decr.) from amendments	0.0
(8) + Increase (decr.) from assumption change	0.0
(9) = Expected UAL after changes	24.9
(10) = Actual UAL at year end	41.9
(11) = Experience gain (loss) (9) – (10)	(17.0)**
(12) = Percent of beginning of year AL	3.1%

\* Unfunded Actuarial Liability/(Surplus)

\*\* Of this amount, \$18.2 million of the experience loss is due to an experience loss on the actuarial value of assets and \$1.2 million represents an experience gain on liabilities.

## Section 6

### Accounting Information

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The actuarial liability is a measure intended to help the reader assess (i) a retirement system's funded status on an on-going concern basis, and (ii) progress being made toward accumulating the assets needed to pay benefits as due. Allocation of the actuarial present value of projected benefits between past and future service was based on service using the Entry Age Normal actuarial cost method. Assumptions, including projected pay increases, were the same as used to determine the System's level percent of payroll annual required contribution between entry age and assumed exit age. Entry age was established by subtracting credited service from current age on the valuation date.

The preceding methods comply with the financial reporting standards established by the Governmental Accounting Standards Board.

The Entry Age Normal actuarial liability was determined as part of an actuarial valuation of the plan as of December 31, 2011. Significant actuarial assumptions used in determining the actuarial liability include:

- (a) a rate of return on the investment of present and future assets of 7.75% per year compounded annually,
- (b) projected salary increases of 4.00% per year compounded annually, (3.5% attributable to inflation, and 0.50% attributable to productivity),
- (c) additional projected salary increases of 0.25% to 3.2% per year attributable to seniority/merit, and
- (d) the assumption that benefits will increase after retirement 3.0% per year (non-compounded) for Plan 1 and 2.0% per year (non-compounded) for Plan 2.

Actuarial Liability:

Active members	\$181,668,873
DROP members	24,302,360
Retired members and beneficiaries currently receiving benefits	325,779,781
Vested terminated members not yet receiving benefits	<u>23,422,709</u>
Total Actuarial Liability	\$555,173,723
Actuarial Value of Assets (market value was \$458,827,503)	\$513,298,382
Unfunded Actuarial Liability	\$41,875,341

During the year ended December 31, 2011, the Plan experienced a net increase of \$15 million in the actuarial liability.

TABLE 12

**Required Supplementary Information  
Schedule of Funding Progress**

<b>Actuarial Valuation Date</b>	<b>Actuarial Value of Assets (a)</b>	<b>Actuarial Liability (AL) (b)</b>	<b>Unfunded AL (UAL) (b)-(a)</b>	<b>Funded Ratio (a)/(b)</b>	<b>Active Member Covered Payroll (c)</b>	<b>UAL as a Percentage of Active Member Covered Payroll ((b-a)/c)</b>
11/30/92	\$182,186	\$204,730	\$22,544	89.0%	\$49,552	45.5%
11/30/93	200,853	218,603	17,750	91.9	52,093	34.1
11/30/94	215,385	230,217	14,832	93.6	52,169	28.4
12/31/95	238,441	242,354	3,913	98.4	54,039	7.2
12/31/96	266,404	252,968	(13,436)	105.3	53,534	(25.1)
12/31/97	296,705	263,573	(33,132)	112.6	54,346	(61.0)
12/31/98	340,417	276,980	(63,437)	122.9	56,093	(113.1)
12/31/99*	383,338	319,289	(64,049)	120.1	57,562	(111.3)
12/31/00	414,643	329,390	(85,253)	125.9	61,112	(139.5)
12/31/01	428,204	353,158	(75,046)	121.2	65,347	(114.8)
12/31/02	433,366**	370,399	(62,967)	117.0	68,117	(92.4)
12/31/03	446,794**	387,037	(59,757)	115.4	69,161	(86.4)
12/31/04*	462,994**	413,159	(49,835)	112.1	72,154	(69.1)
12/31/05*	479,275**	433,297	(45,978)	110.6	72,367	(63.5)
12/31/06*	505,756**	459,062	(46,694)	110.2	75,881	(61.5)
12/31/07*	533,911**	483,387	(50,524)	110.5	78,736	(64.2)
12/31/08*	512,853**	512,374	(480)	100.1	81,580	(0.6)
12/31/09*	509,494**	529,271	19,778	96.3	82,704	23.9
12/31/10*	516,308**	540,436	24,128	95.5	79,636	30.3
12/31/11*	513,298**	555,174	41,876	92.5	75,444	55.5

*Rounded dollar amounts are in thousands.*

\* After changes in benefits and/or actuarial assumptions and/or actuarial cost methods.

\*\* Includes all members except Plan 3b.

Analysis of the dollar amounts of actuarial value of assets, actuarial liability, or unfunded actuarial liability in isolation can be misleading. Expressing the actuarial value of assets as a percentage of the actuarial liability provides one indication of the System's funded status on an on-going concern basis. Analysis of this percentage over time indicates whether the System is becoming financially stronger or weaker. Generally, the greater this percentage, the stronger the plan's funding. The unfunded actuarial liability and annual covered payroll are both affected by inflation. Expressing the unfunded actuarial liability as a percentage of covered payroll approximately adjusts for the effects of inflation and aids analysis of the progress being made in accumulating sufficient assets to pay benefits when due. Generally, the smaller this percentage, the stronger the plan's funding.

TABLE 13

**Required Supplementary Information  
Schedule of Employer Contributions**

<b>Fiscal Year</b>	<b>Actuarial Valuation Date</b>	<b>Annual Required Contribution</b>	<b>Percent Contribution</b>
1997	12/31/95	\$4,459,654	100.0%
1998	12/31/96	4,140,163	100.0
1999	12/31/97	4,134,826	100.0
2000	12/31/98	2,751,084	100.0
2001	12/31/99	1,843,213	100.0
2002	12/31/00	3,137,912*	100.0
2003	12/31/01	3,189,513*	100.0
2004	12/31/02	3,266,706*	100.0
2005	12/31/03	3,589,063*	100.0
2006	12/31/04	3,566,429*	100.0
2007	12/31/05	3,700,590*	100.0
2008	12/31/06	3,834,270*	100.0
2009	12/31/07	3,887,085*	100.0
2010	12/31/08	6,689,450*	100.0
2011	12/31/09	7,695,317*	100.0

\*Reflects contributions to Plans 1, 2 and 3. Excludes contributions for Plan 3b members.

**Notes to Required Supplementary Information  
Summary of Actuarial Methods and Assumptions**

Valuation Date	December 31, 2011
Actuarial Cost Method	Entry Age Normal
Amortization Method	Level percent of payroll, open
Remaining Amortization Period	20 years
Asset Valuation Method	Expected + 25% of (Market – Expected Values)
Actuarial Assumptions:	
Investment Rate of Return*	7.75%
Projected Salary Increases*	4.25% - 7.20%
* Includes Inflation at	3.50%
Cost-of-Living Adjustments	3.00% Non-compounded (Plan 1) 2.00% Non-compounded (Plan 2)

**TABLE 14**  
**Solvency Test**

<b>Aggregate Actuarial Liability For</b>							
<b>Valuation Date</b>	<b>(1) Active Member Contributions</b>	<b>(2) Retirants and Beneficiaries*</b>	<b>(3) Active Members (Employer Financed Portion)</b>	<b>Reported Valuation Assets</b>	<b>Portion of Actuarial Liabilities Covered by Reported Assets</b>		
					<b>(1)</b>	<b>(2)</b>	<b>(3)</b>
12/31/95	\$28,549,082	\$123,759,638	\$ 90,046,029	\$238,441,351	100.0%	100.0%	95.7%
12/31/96	28,996,944	133,093,326	90,877,809	266,403,759	100.0	100.0	114.8
12/31/97	29,881,922	141,922,445	91,768,436	296,704,769	100.0	100.0	136.1
12/31/98	29,694,389	156,764,183	90,521,375	340,417,265	100.0	100.0	170.1
12/31/99	32,017,094	169,602,958	117,669,351	383,337,991	100.0	100.0	154.4
12/31/00	34,189,528	177,095,907	118,104,491	414,642,694	100.0	100.0	172.2
12/31/01	33,516,616	179,374,487	140,266,410	428,204,828	100.0	100.0	153.5
12/31/02	38,291,472	192,615,216	139,492,410	433,365,890	100.0	100.0	145.1
12/31/03	39,847,119	205,799,341	141,390,445	446,794,052	100.0	100.0	142.3
12/31/04	41,852,724	218,518,676	152,632,267	462,994,047	100.0	100.0	132.8
12/31/05	43,397,403	228,408,201	161,491,272	479,274,508	100.0	100.0	128.5
12/31/06	45,475,389	237,860,848	175,725,905	505,755,995	100.0	100.0	126.6
12/31/07	46,189,489	256,374,002	180,823,537	533,911,465	100.0	100.0	127.9
12/31/08	46,541,280	272,176,420	193,655,822	512,853,345	100.0	100.0	100.2
12/31/09	49,152,328	279,396,973	200,722,170	509,493,888	100.0	100.0	90.1
12/31/10	50,473,365	293,227,477	196,734,871	516,307,845	100.0	100.0	87.7
12/31/11	45,440,569	349,202,490	160,530,664	513,298,382	100.0	100.0	73.9

During the twelve months ended December 31, 2011, the Wichita Employees' Retirement System generated a net experience loss of \$17.0 million. The amount is 3.0% of the actuarial liability at the beginning of the year.

\*Includes vested terminated members



**Appendix A**  
**Summary of Membership Data**

**MEMBER DATA RECONCILIATION**  
December 31, 2010 to December 31, 2011

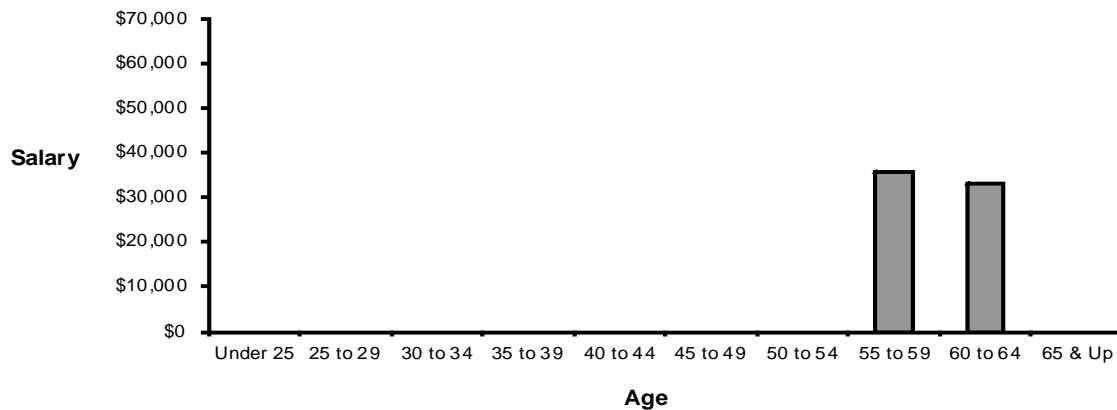
The number of members included in the valuation, as summarized in the table below, is in accordance with the data submitted by the System for members as of the valuation date.

	Active Participants			DROP Participants		Retirees and Beneficiaries		Terminated Vested		Total
	Plan 1	Plan 2	Plan 3	Plan 1	Plan 2	Plan 1	Plan 2	Plan 1	Plan 2	
Members as of 12/31/10	7	976	661	54	17	830	363	2	132	3,042
New Members	0	0	+79	0	0	+9	+6	0	0	+94
Transfers	0	+67	-73	0	0	0	0	0	0	-6
Terminations										
Refunded	0	-8	-56	0	0	0	0	0	0	-64
Deferred Vested	0	-26	0	0	0	0	0	0	+26	0
Retirements										
Service	-2	-92	0	-27	-14	+30	+119	-1	-13	0
Disability	0	0	0	0	0	0	0	0	0	0
DROP	-3	-12	0	+3	+12	0	0	0	0	0
Deaths										
Cashed Out	0	0	0	0	0	0	0	0	0	0
With Beneficiary	0	0	0	0	0	-8	-5	0	0	-13
Without Beneficiary	0	-1	0	-1	0	-25	-7	0	-1	-35
Data Adjustments	0	-3	0	0	0	0	-2	0	+1	-4
<b>Members as of 12/31/11</b>	<b>2</b>	<b>901</b>	<b>611</b>	<b>29</b>	<b>15</b>	<b>836</b>	<b>474</b>	<b>1</b>	<b>145</b>	<b>3,014</b>

**Summary of Active Members  
(Excluding DROP Members)  
as of December 31, 2011**

Age	Plan 1					
	Number			Valuation Salaries		
	Male	Female	Total	Male	Female	Total
Under 25	0	0	0	\$ 0	\$ 0	\$ 0
25 to 29	0	0	0	0	0	0
30 to 34	0	0	0	0	0	0
35 to 39	0	0	0	0	0	0
40 to 44	0	0	0	0	0	0
45 to 49	0	0	0	0	0	0
50 to 54	0	0	0	0	0	0
55 to 59	1	0	1	35,485	0	35,485
60 to 64	1	0	1	32,870	0	32,870
65 & Up	0	0	0	0	0	0
Total	2	0	2	\$ 68,355	\$ 0	\$ 68,355

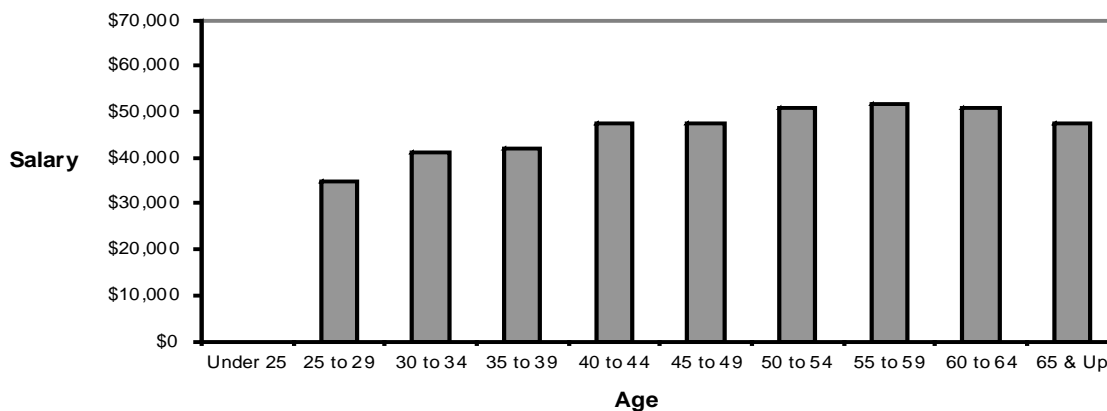
**Average Salary by Age**



**Summary of Active Members  
(Excluding DROP Members)  
as of December 31, 2011**

Age	Plan 2			Valuation Salaries		
	Male	Female	Total	Male	Female	Total
Under 25	0	0	0	\$ 0	\$ 0	\$ 0
25 to 29	2	1	3	68,120	36,628	104,748
30 to 34	23	6	29	942,599	247,916	1,190,515
35 to 39	29	26	55	1,139,790	1,164,051	2,303,841
40 to 44	61	38	99	2,929,037	1,781,127	4,710,164
45 to 49	102	61	163	4,763,882	2,980,993	7,744,875
50 to 54	139	82	221	7,071,101	4,180,614	11,251,715
55 to 59	139	93	232	7,177,182	4,818,688	11,995,870
60 to 64	55	35	90	2,924,306	1,657,569	4,581,875
65 & Up	6	3	9	286,828	138,530	425,358
Total	556	345	901	\$ 27,302,845	\$ 17,006,116	\$ 44,308,961

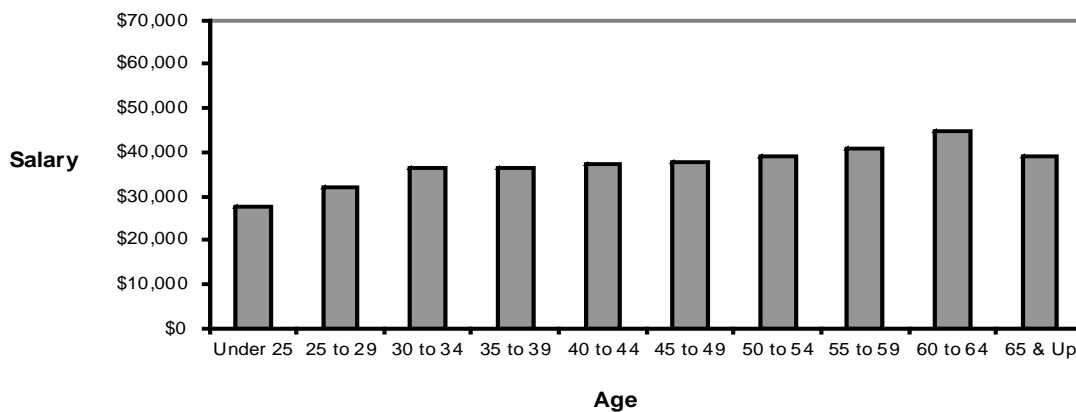
**Average Salary by Age**



**Summary of Active Members  
as of December 31, 2011**

Age	Plan 3			Valuation Salaries		
	Male	Female	Total	Male	Female	Total
Under 25	12	7	19	\$ 336,048	\$ 185,380	\$ 521,428
25 to 29	51	33	84	1,638,873	1,054,163	2,693,036
30 to 34	62	41	103	2,242,177	1,494,023	3,736,200
35 to 39	47	39	86	1,660,750	1,479,844	3,140,594
40 to 44	43	30	73	1,616,050	1,108,843	2,724,893
45 to 49	47	27	74	1,806,762	970,977	2,777,739
50 to 54	41	33	74	1,687,679	1,209,556	2,897,235
55 to 59	40	19	59	1,730,965	673,644	2,404,609
60 to 64	17	9	26	768,255	399,751	1,168,006
65 & Up	10	3	13	394,486	114,846	509,332
Total	370	241	611	\$ 13,882,045	\$ 8,691,027	\$ 22,573,072

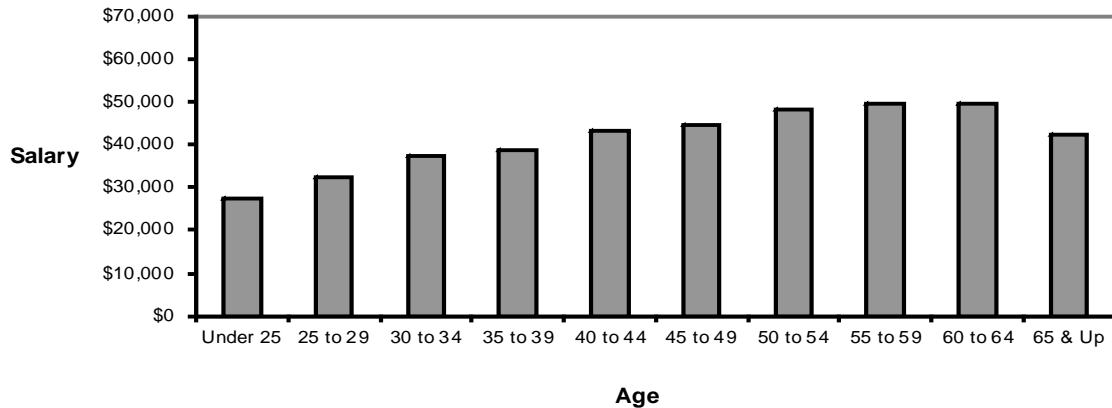
**Average Salary by Age**



**Summary of Active Members  
(Excluding DROP Members)  
as of December 31, 2011**

Age	All Plans			Valuation Salaries		
	Male	Female	Total	Male	Female	Total
Under 25	12	7	19	\$ 336,048	\$ 185,380	\$ 521,428
25 to 29	53	34	87	1,706,993	1,090,791	2,797,784
30 to 34	85	47	132	3,184,776	1,741,939	4,926,715
35 to 39	76	65	141	2,800,540	2,643,895	5,444,435
40 to 44	104	68	172	4,545,087	2,889,970	7,435,057
45 to 49	149	88	237	6,570,644	3,951,970	10,522,614
50 to 54	180	115	295	8,758,780	5,390,170	14,148,950
55 to 59	180	112	292	8,943,632	5,492,332	14,435,964
60 to 64	73	44	117	3,725,431	2,057,320	5,782,751
65 & Up	16	6	22	681,314	253,376	934,690
Total	928	586	1,514	\$ 41,253,245	\$ 25,697,143	\$ 66,950,388

**Average Salary by Age**

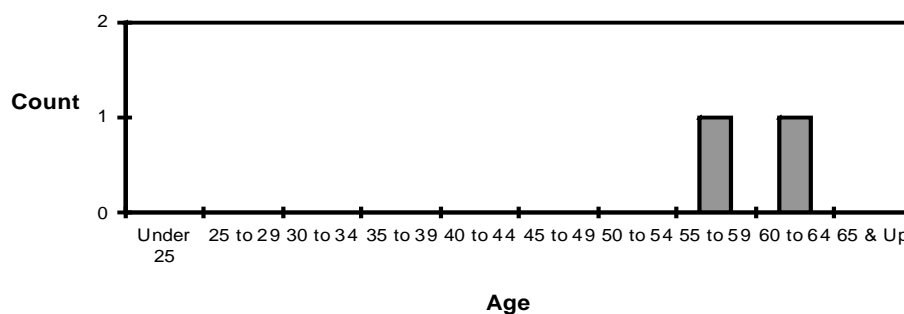


**Distribution of Active Members  
(Excluding DROP Members)  
as of December 31, 2011**

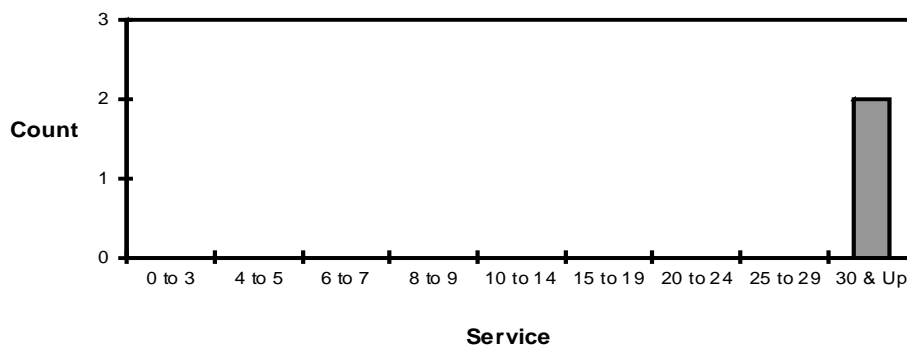
**Plan 1**

Age	Years of Service									Total
	0 to 3	4 to 5	6 to 7	8 to 9	10 to 14	15 to 19	20 to 24	25 to 29	30 & Up	
Under 25	0	0	0	0	0	0	0	0	0	0
25 to 29	0	0	0	0	0	0	0	0	0	0
30 to 34	0	0	0	0	0	0	0	0	0	0
35 to 39	0	0	0	0	0	0	0	0	0	0
40 to 44	0	0	0	0	0	0	0	0	0	0
45 to 49	0	0	0	0	0	0	0	0	0	0
50 to 54	0	0	0	0	0	0	0	0	0	0
55 to 59	0	0	0	0	0	0	0	0	1	1
60 to 64	0	0	0	0	0	0	0	0	1	1
65 & Up	0	0	0	0	0	0	0	0	0	0
Total	0	0	0	0	0	0	0	0	2	2

**Age Distribution**



**Service Distribution**



Average age: 59.0

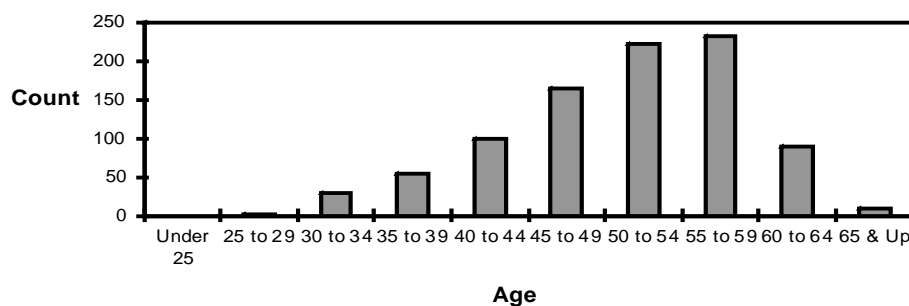
Average service: 36.5

**Distribution of Active Members  
(Excluding DROP Members)  
as of December 31, 2011**

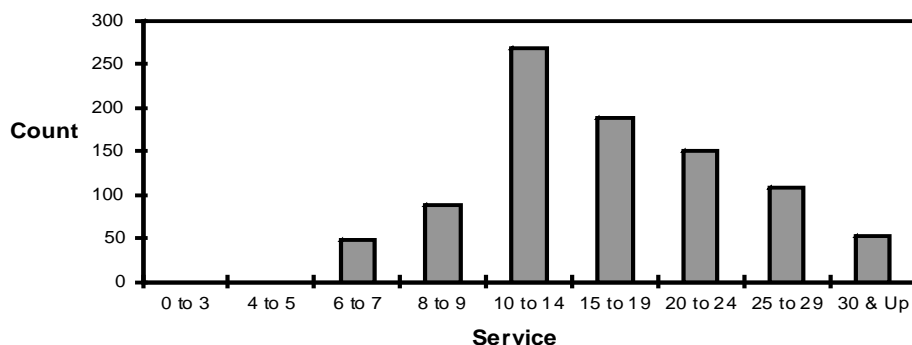
**Plan 2**

Age	Years of Service									Total
	0 to 3	4 to 5	6 to 7	8 to 9	10 to 14	15 to 19	20 to 24	25 to 29	30 & Up	
Under 25	0	0	0	0	0	0	0	0	0	0
25 to 29	0	0	1	1	1	0	0	0	0	3
30 to 34	0	0	5	12	11	1	0	0	0	29
35 to 39	0	0	8	6	31	10	0	0	0	55
40 to 44	0	0	7	13	40	30	8	1	0	99
45 to 49	0	0	9	17	47	30	35	21	4	163
50 to 54	0	0	11	16	48	48	54	35	9	221
55 to 59	0	0	2	13	58	49	39	40	31	232
60 to 64	0	0	5	10	26	17	14	10	8	90
65 & Up	0	0	1	0	5	2	0	1	0	9
Total	0	0	49	88	267	187	150	108	52	901

**Age Distribution**



**Service Distribution**



Average age: 50.8

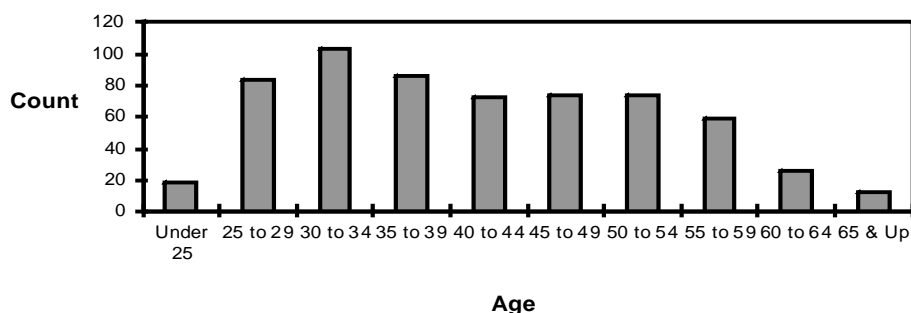
Average service: 17.3

**Distribution of Active Members  
as of December 31, 2011**

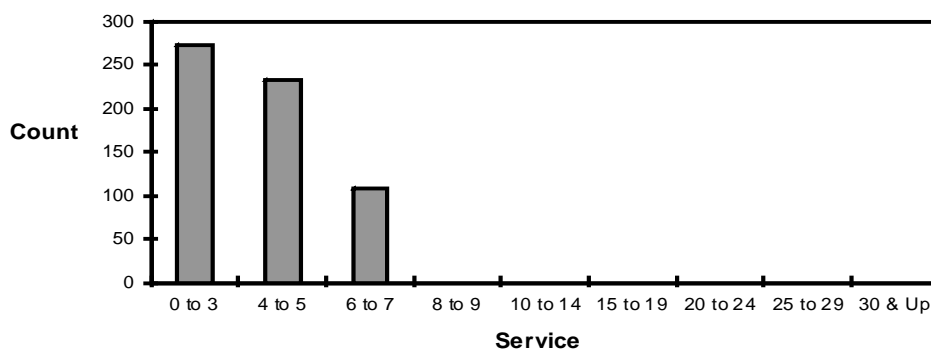
**Plan 3**

Age	Years of Service									Total
	0 to 3	4 to 5	6 to 7	8 to 9	10 to 14	15 to 19	20 to 24	25 to 29	30 & Up	
Under 25	15	4	0	0	0	0	0	0	0	19
25 to 29	47	27	10	0	0	0	0	0	0	84
30 to 34	42	41	20	0	0	0	0	0	0	103
35 to 39	35	34	17	0	0	0	0	0	0	86
40 to 44	33	27	13	0	0	0	0	0	0	73
45 to 49	30	26	18	0	0	0	0	0	0	74
50 to 54	29	36	9	0	0	0	0	0	0	74
55 to 59	29	19	11	0	0	0	0	0	0	59
60 to 64	5	15	6	0	0	0	0	0	0	26
65 & Up	7	3	3	0	0	0	0	0	0	13
Total	272	232	107	0	0	0	0	0	0	611

**Age Distribution**



**Service Distribution**



Average age: 41.6

Average service: 4.3

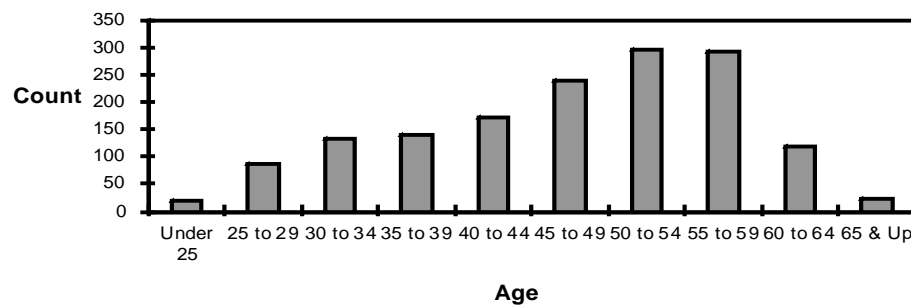


**Distribution of Active Members  
(Excluding DROP Members)  
as of December 31, 2011**

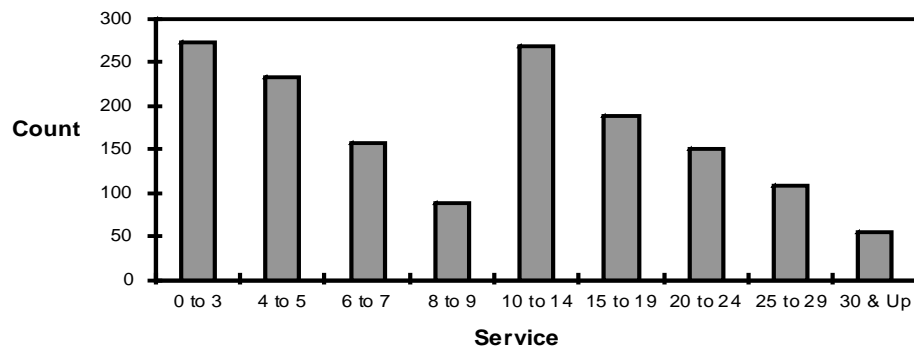
**All Plans**

Age	Years of Service									Total
	0 to 3	4 to 5	6 to 7	8 to 9	10 to 14	15 to 19	20 to 24	25 to 29	30 & Up	
Under 25	15	4	0	0	0	0	0	0	0	19
25 to 29	47	27	11	1	1	0	0	0	0	87
30 to 34	42	41	25	12	11	1	0	0	0	132
35 to 39	35	34	25	6	31	10	0	0	0	141
40 to 44	33	27	20	13	40	30	8	1	0	172
45 to 49	30	26	27	17	47	30	35	21	4	237
50 to 54	29	36	20	16	48	48	54	35	9	295
55 to 59	29	19	13	13	58	49	39	40	32	292
60 to 64	5	15	11	10	26	17	14	10	9	117
65 & Up	7	3	4	0	5	2	0	1	0	22
Total	272	232	156	88	267	187	150	108	54	1,514

**Age Distribution**



**Service Distribution**



Average age: 47.2

Average service: 12.5

**Distribution of Drop Members  
as of December 31, 2011**

**Plan 1**

Age	Service					Total
	Under 20	20 to 24	25 to 29	30 to 34	35 & Up	
Under 50	0	0	0	0	0	0
50-54	0	0	11	0	0	11
55-59	0	0	9	3	0	12
60-64	0	0	4	0	0	4
65 & Up	0	0	0	2	0	2
Total	0	0	24	5	0	29

Age	DROP Duration Elected (months)					Total
	1 to 12	13 to 24	25 to 36	37 to 48	49 to 60	
Under 50	0	0	0	0	0	0
50-54	0	0	1	0	10	11
55-59	0	0	0	0	12	12
60-64	0	0	0	0	4	4
65 & Up	0	0	0	0	2	2
Total	0	0	1	0	28	29

Age	Monthly Benefits	Current Balance
Under 50	\$ 0	\$ 0
50-54	35,084	1,278,273
55-59	39,178	1,816,540
60-64	12,770	749,355
65 & Up	10,447	752,744
Total	\$ 97,479	\$ 4,596,912

Covered Payroll: \$1,679,583

**Distribution of Drop Members  
as of December 31, 2011**

**Plan 2**

Age	Service							Total
	Under 10	10 to 14	15 to 19	20 to 24	25 to 29	30 to 34	35 & Up	
Under 50	0	0	0	0	0	0	0	0
50-55	0	0	0	0	0	0	0	0
55-59	0	0	0	0	0	0	0	0
60-64	0	1	2	3	3	1	2	12
65 & Up	0	1	1	0	1	0	0	3
Total	0	2	3	3	4	1	2	15

Age	DROP Duration Elected (months)					Total
	1 to 12	13 to 24	25 to 36	37 to 48	49 to 60	
Under 50	0	0	0	0	0	0
50-55	0	0	0	0	0	0
55-59	0	0	0	0	0	0
60-64	0	2	4	2	4	12
65 & Up	0	2	1	0	0	3
Total	0	4	5	2	4	15

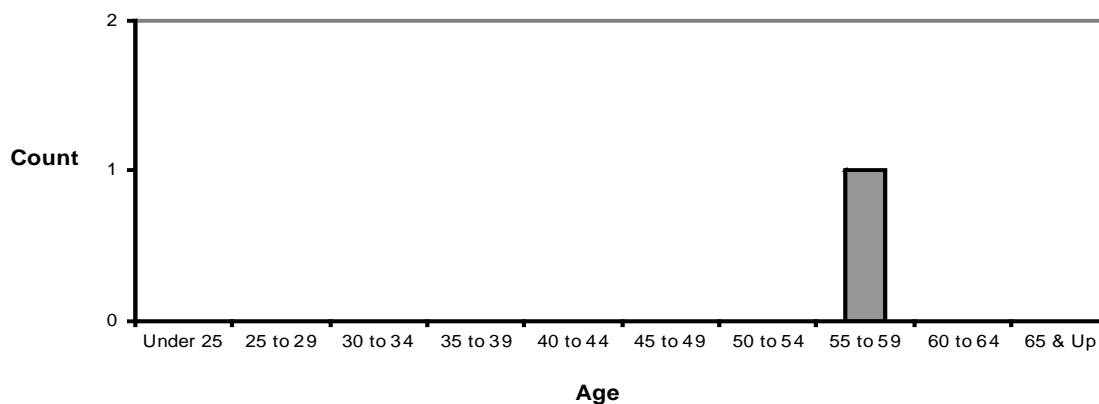
Age	Monthly Benefits	Current Balance
Under 50	\$ 0	\$ 0
50-54	0	0
55-59	0	0
60-64	33,786	349,422
65 & Up	4,604	74,047
Total	\$ 38,390	\$ 423,469

Covered Payroll: \$829,665

**Summary of Deferred Vested Members  
as of December 31, 2011**

Age	Plan 1					
	Number			Current Monthly Benefit at Retirement		
	Male	Female	Total	Male	Female	Total
Under 25	0	0	0	\$ 0	\$ 0	\$ 0
25 to 29	0	0	0	0	0	0
30 to 34	0	0	0	0	0	0
35 to 39	0	0	0	0	0	0
40 to 44	0	0	0	0	0	0
45 to 49	0	0	0	0	0	0
50 to 54	0	0	0	0	0	0
55 to 59	1	0	1	1,991	0	1,991
60 to 64	0	0	0	0	0	0
65 & Up	0	0	0	0	0	0
Total	1	0	1	\$ 1,991	\$ 0	\$ 1,991

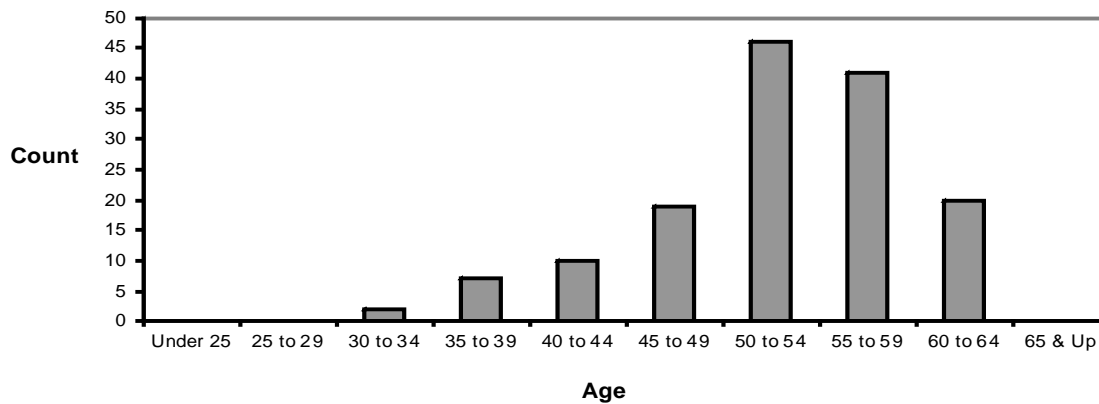
**Age Distribution**



**Summary of Deferred Vested Members  
as of December 31, 2011**

Age	Plan 2			Current Monthly Benefit at Retirement		
	Male	Female	Total	Male	Female	Total
Under 25	0	0	0	\$ 0	\$ 0	\$ 0
25 to 29	0	0	0	0	0	0
30 to 34	2	0	2	913	0	913
35 to 39	6	1	7	6,511	1,000	7,511
40 to 44	5	5	10	3,486	5,934	9,420
45 to 49	7	12	19	8,609	17,729	26,338
50 to 54	22	24	46	34,959	36,636	71,595
55 to 59	21	20	41	37,199	28,899	66,098
60 to 64	9	11	20	14,026	20,106	34,132
65 & Up	0	0	0	0	0	0
Total	72	73	145	\$ 105,703	\$ 110,304	\$ 216,007

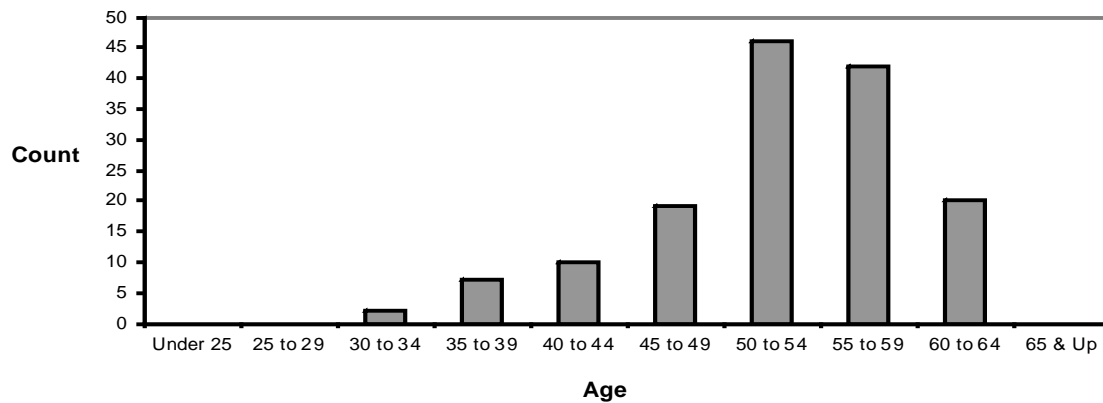
**Age Distribution**



**Summary of Deferred Vested Members  
as of December 31, 2011**

Age	All Plans					
	Number			Current Monthly Benefit at Retirement		
	Male	Female	Total	Male	Female	Total
Under 25	0	0	0	\$ 0	\$ 0	\$ 0
25 to 29	0	0	0	0	0	0
30 to 34	2	0	2	913	0	913
35 to 39	6	1	7	6,511	1,000	7,511
40 to 44	5	5	10	3,486	5,934	9,420
45 to 49	7	12	19	8,609	17,729	26,338
50 to 54	22	24	46	34,959	36,636	71,595
55 to 59	22	20	42	39,190	28,899	68,089
60 to 64	9	11	20	14,026	20,106	34,132
65 & Up	0	0	0	0	0	0
Total	73	73	146	\$ 107,694	\$ 110,304	\$ 217,998

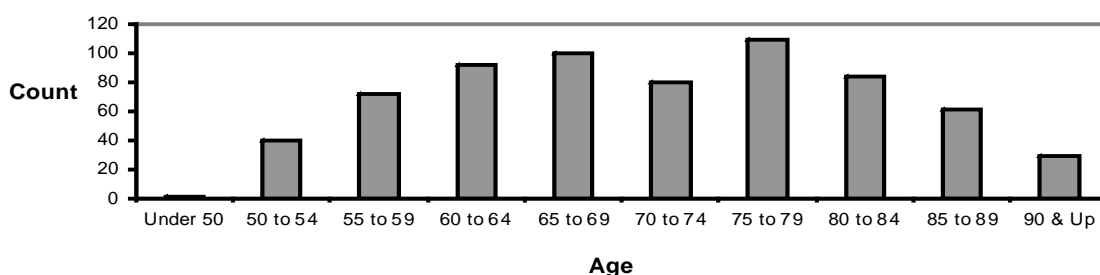
**Age Distribution**



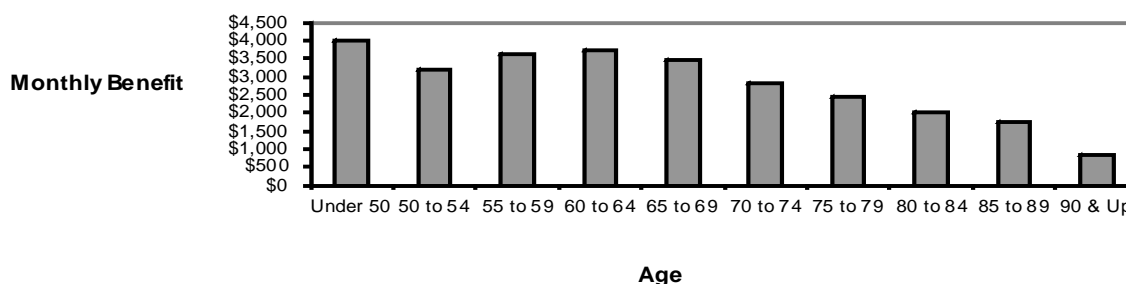
**Summary of Retired Members\***  
as of December 31, 2011

Age	Plan 1			Monthly Benefit		
	Number					
	Male	Female	Total	Male	Female	Total
Under 50	1	0	1	\$ 3,986	\$ 0	\$ 3,986
50 to 54	26	13	39	90,246	34,303	124,549
55 to 59	47	25	72	178,118	82,637	260,755
60 to 64	66	26	92	261,103	79,027	340,130
65 to 69	69	30	99	262,332	78,696	341,028
70 to 74	55	24	79	173,841	49,939	223,780
75 to 79	62	47	109	161,726	103,589	265,315
80 to 84	48	35	83	115,770	51,296	167,066
85 to 89	27	34	61	66,571	39,676	106,247
90 & Up	7	22	29	8,015	16,751	24,766
Total	408	256	664	\$ 1,321,708	\$ 535,914	\$ 1,857,622

**Age Distribution**



**Average Benefit**

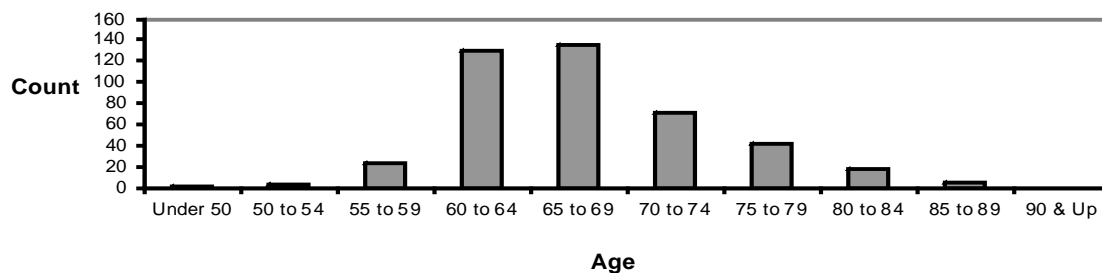


\* Includes DROP members.

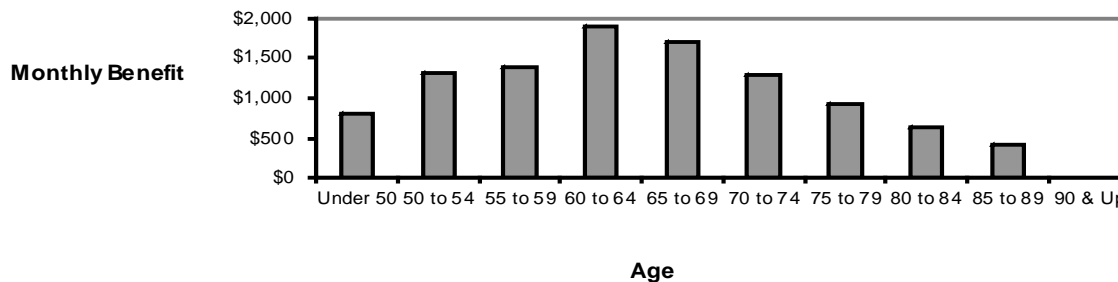
**Summary of Retired Members\***  
**as of December 31, 2011**

Age	Plan 2			Monthly Benefit		
	Male	Female	Total	Male	Female	Total
Under 50	0	1	1	\$ 0	\$ 802	\$ 802
50 to 54	3	1	4	3,693	1,512	5,205
55 to 59	15	8	23	22,612	9,465	32,077
60 to 64	83	47	130	159,092	87,130	246,222
65 to 69	72	64	136	127,256	104,565	231,821
70 to 74	35	36	71	50,916	41,017	91,933
75 to 79	23	18	41	21,059	17,171	38,230
80 to 84	9	9	18	6,420	4,923	11,343
85 to 89	2	3	5	1,322	718	2,040
90 & Up	0	0	0	0	0	0
Total	242	187	429	\$ 392,370	\$ 267,303	\$ 659,673

**Age Distribution**



**Average Benefit**



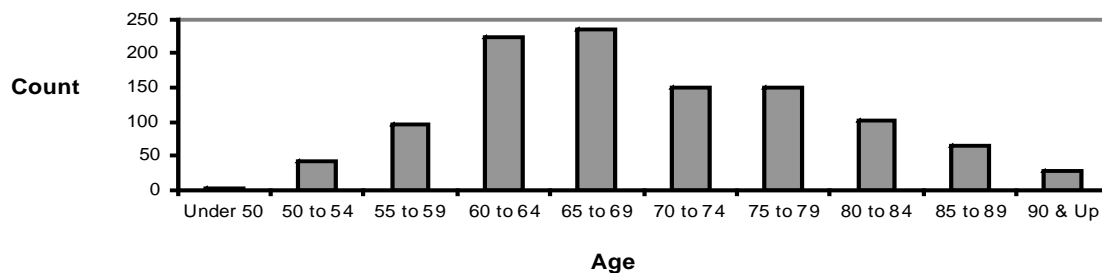
\* Includes DROP members.



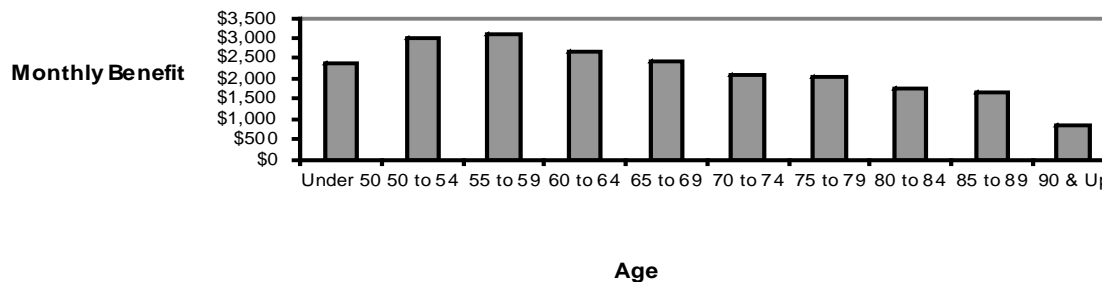
**Summary of Retired Members\***  
as of December 31, 2011

Age	All Plans			Monthly Benefit		
	Number					
	Male	Female	Total	Male	Female	Total
Under 50	1	1	2	\$ 3,986	\$ 802	\$ 4,788
50 to 54	29	14	43	93,939	35,815	129,754
55 to 59	62	33	95	200,730	92,102	292,832
60 to 64	149	73	222	420,195	166,157	586,352
65 to 69	141	94	235	389,588	183,261	572,849
70 to 74	90	60	150	224,757	90,956	315,713
75 to 79	85	65	150	182,785	120,760	303,545
80 to 84	57	44	101	122,190	56,219	178,409
85 to 89	29	37	66	67,893	40,394	108,287
90 & Up	7	22	29	8,015	16,751	24,766
Total	650	443	1,093	\$ 1,714,078	\$ 803,217	\$ 2,517,295

**Age Distribution**



**Average Benefit**

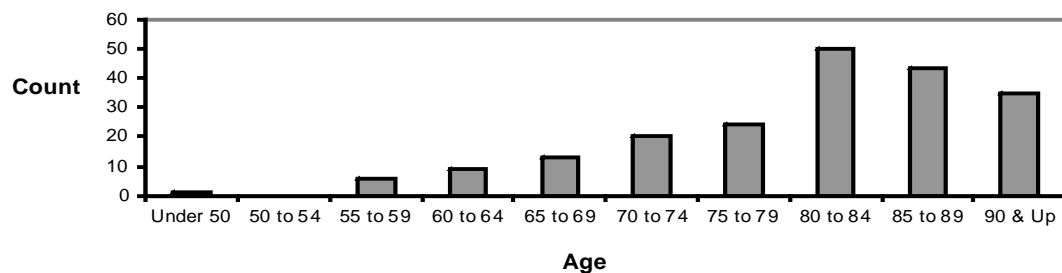


\* Includes DROP members.

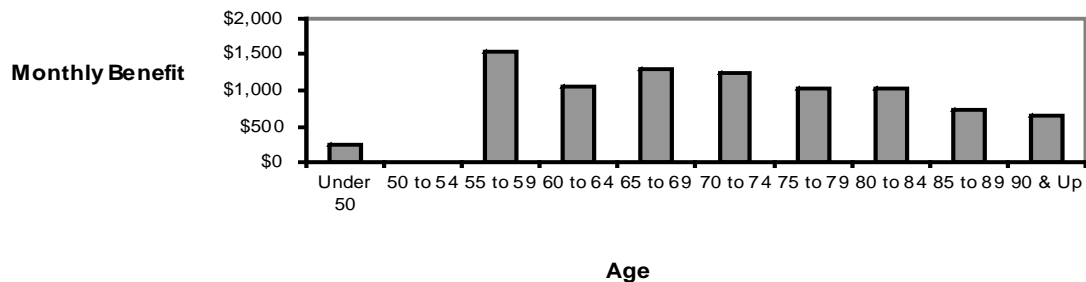
**Summary of Beneficiaries  
as of December 31, 2011**

Age	Plan 1			Monthly Benefit		
	Number					
	Male	Female	Total	Male	Female	Total
Under 50	0	1	1	\$ 0	\$ 253	\$ 253
50 to 54	0	0	0	0	0	0
55 to 59	0	6	6	0	9,130	9,130
60 to 64	2	7	9	2,035	7,487	9,522
65 to 69	2	11	13	1,423	15,264	16,687
70 to 74	3	17	20	2,445	22,154	24,599
75 to 79	2	22	24	1,785	22,621	24,406
80 to 84	8	42	50	4,525	46,566	51,091
85 to 89	6	37	43	2,500	28,458	30,958
90 & Up	2	33	35	1,085	21,715	22,800
Total	25	176	201	\$ 15,798	\$ 173,648	\$ 189,446

**Age Distribution**



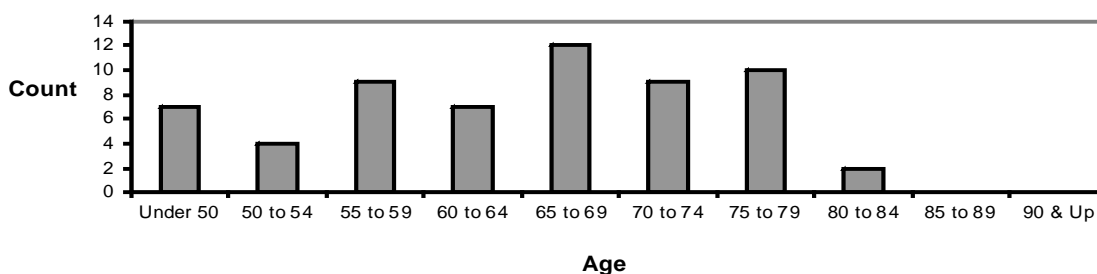
**Average Benefit**



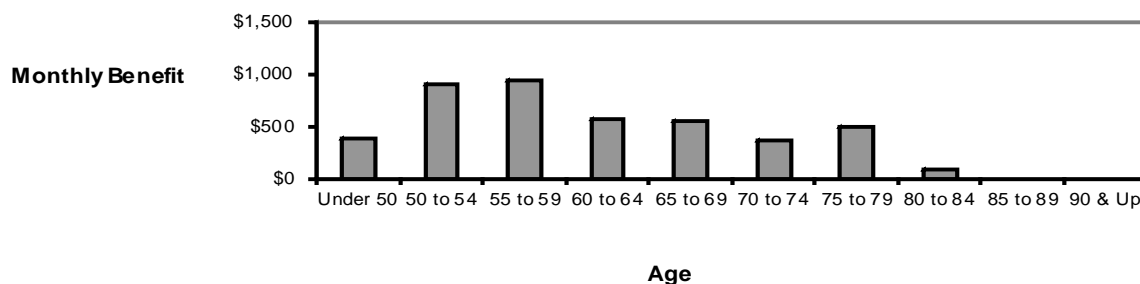
**Summary of Beneficiaries  
as of December 31, 2011**

Age	Plan 2			Monthly Benefit		
	Male	Female	Total	Male	Female	Total
Under 50	2	5	7	\$ 684	\$ 1,964	\$ 2,648
50 to 54	2	2	4	2,075	1,494	3,569
55 to 59	0	9	9	0	8,484	8,484
60 to 64	0	7	7	0	3,934	3,934
65 to 69	2	10	12	948	5,656	6,604
70 to 74	2	7	9	733	2,586	3,319
75 to 79	1	9	10	332	4,637	4,969
80 to 84	1	1	2	125	63	188
85 to 89	0	0	0	0	0	0
90 & Up	0	0	0	0	0	0
Total	10	50	60	\$ 4,897	\$ 28,818	\$ 33,715

**Age Distribution**



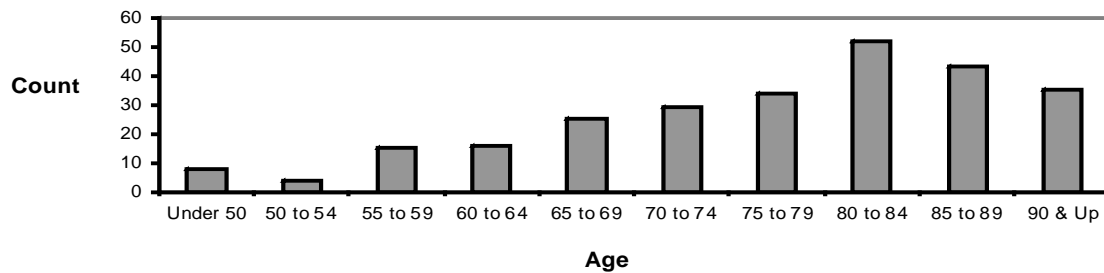
**Average Benefit**



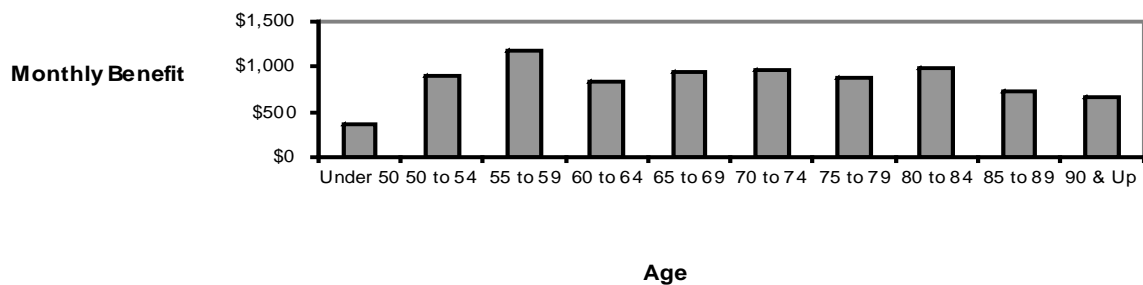
**Summary of Beneficiaries  
as of December 31, 2011**

Age	All Plans			Monthly Benefit		
	Male	Female	Total	Male	Female	Total
Under 50	2	6	8	\$ 684	\$ 2,217	\$ 2,901
50 to 54	2	2	4	2,075	1,494	3,569
55 to 59	0	15	15	0	17,614	17,614
60 to 64	2	14	16	2,035	11,421	13,456
65 to 69	4	21	25	2,371	20,920	23,291
70 to 74	5	24	29	3,178	24,740	27,918
75 to 79	3	31	34	2,117	27,258	29,375
80 to 84	9	43	52	4,650	46,629	51,279
85 to 89	6	37	43	2,500	28,458	30,958
90 & Up	2	33	35	1,085	21,715	22,800
Total	35	226	261	\$ 20,695	\$ 202,466	\$ 223,161

**Age Distribution**



**Average Benefit**



**Appendix B**  
**Summary of Benefit Provisions**

**DEFINED BENEFIT PLANS 1 AND 2**

**Plan 1** is applicable to members employed prior to July 18, 1981 who have not elected to be covered by Plan 2.

**Plan 2** is applicable to members employed or re-employed on or after July 18, 1981 and before January 1, 1994 and to other employees who have elected Plan 2 coverage.

**Normal Retirement (no reduction factor)**

**Eligibility** – Plan 1: Age 60 with 7 or more years of service, or any age with 30 or more years of service.  
Plan 2: Age 62 with 7 or more years of service (effective August 1, 1990).

**Annual Amount** – Plan 1: Service times 2.5% of Final Average Salary to a maximum of 75% of Final Average Salary.  
Plan 2: Service times 2.25% of Final Average Salary, to a maximum of 75% of Final Average Salary (effective January 1, 2000).

**Final Average Salary – all plans:** Average for the 3 consecutive years of service which produce the highest average and which are within the last 10 years of service.

**Early Retirement (with reduction factor)**

**Eligibility** – Plan 1: Age 55 with 7 or more years of service.  
Plan 2: Age 55 with 7 or more years of service.

**Annual Amount** – An amount computed as for normal retirement but reduced for each month retirement precedes age 60 under Plan 1 and age 62 under Plan 2. The amount of reduction per month of early retirement is:

<b>Plan 1</b>	<b>Plan 2</b>
A service graduated percentage for each month retirement precedes age 60. The percentage is .05 of 1% if service is 29 years but less than 30 years, increasing by .05 of 1% for each additional year service is less than 30 years, to a maximum of .50 of 1% if service is less than 20 years.	An age graduated percentage for each month retirement precedes age 62. The percentage is 0.6% for each month that the member's age precedes age 62, up to maximum of 50.4% at age 55.

### **Deferred Retirement (Vested Termination)**

**Eligibility** – 7 or more years of service. A terminated employee may apply for a reduced pension upon meeting the applicable age requirement for early retirement or an unreduced pension upon meeting the applicable age requirement for normal retirement. A terminated employee may elect a refund of employee contributions, plus applicable interest, in lieu of a deferred retirement benefit.

**Annual Amount** – An amount computed as for normal retirement. Vested deferred pensions are adjusted during the deferral period based on changes in National Average Earnings, up to 5.5% annual adjustments.

### **Deferred Retirement Option Plan (DROP)**

**Eligibility** – Member must be eligible to retire under early reduced or normal age and/or service requirements and elect to participate in DROP for up to 5 years.

**Amount** – Benefit computed based on years of service, final average salary as of the DROP election date, and length of DROP period. Benefit is paid into member's notional DROP account during the deferral period. Member continues to make required employee contributions during the deferral period. Interest at an annual rate of 5%, compounded monthly, is credited to the notional DROP account. Voluntary termination of employment during the DROP period results in loss of accrued interest. Balance of DROP account is payable within 90 days of actual termination of employment.

### **Service-Connected Disability**

**Eligibility** – No age or service requirement. Requires total and permanent disability, as defined in State worker's compensation act, for employment by the City in a position commensurate with the employee's training, experience and education.

**Annual Amount** – Plan 1: 60% of final rate of salary.  
Plan 2: 50% of final rate of salary.

### **Non Service-Connected Disability**

**Eligibility** – 7 or more years of service. Requires total and permanent disability for employment by the City in a position commensurate with the employee's training, experience and education.

**Annual Amount** – Plan 1: 30% of Final Average Salary plus 1% of Final Average Salary for each year of service in excess of 7 years. Maximum is 50% of Final Average Salary.  
Plan 2: 25% of final rate of salary.

### **Post-Retirement Survivor Benefits**

**Eligibility: Surviving Spouse** - must have been married to retired employee for one year or more, at time of death if retired after January 1, 2000. If retired prior to January 1, 2000, must have been married to retired employee at retirement.

**Minor Children** – under age 18.

**Annual Amount: Surviving Spouse** - 50% of amount that was being paid to retiree.

**Minor Child with Surviving Spouse** - 10% of the member's Final Average Salary for each child under age 18. Maximum, including surviving spouse benefit, is 75% of Final Average Salary.

**Minor Child without Surviving Spouse** - 20% of the member's Final Average Salary for each child under age 18. Maximum benefit is 60% of Final Average Salary.

### **Post-Retirement Funeral Benefit**

**Eligibility: Designated Beneficiary** – must have been designated by the retired employee.

**Amount** - Plan 1: \$1,500 funeral benefit.  
Plan 2: No funeral benefit provided.

### **Pre-Retirement Survivor Benefits**

**Eligibility: Surviving Spouse** – Plan 1: Death of employee with 7 or more years of credited service.  
Plan 2: Death of employee with 7 or more years of credited service.

**Annual Amount** - 50% of amount that the deceased employee would have been entitled to had he/she been on an unreduced retirement at time of death.

**Eligibility: Designated Beneficiary** – The beneficiary designated by an unmarried member or by a member who fails to meet the 7 year service requirement for the surviving spouse benefit.

**Amount** – The deceased employee's contributions, plus applicable interest, plus one month's salary for each full year of service up to a maximum of 6 years.

### **Other Termination Benefits**

**Eligibility** – Termination of employment without eligibility for any other benefit.

**Amount** – Accumulated employee contributions with interest at 5% per year compounded monthly are refunded.

### **Post-Retirement Adjustment of Benefits**

**Eligibility** – Plan 1: Completion of 12 months of retirement and annually thereafter.  
Plan 2: If retired on or after January 1, 2000: Completion of 12 months of retirement.  
If retired before January 1, 2000: Benefit not provided (effective 2/19/2000).

**Annual Amount** – Plan 1: 3.0% of the base amount of benefit (increases are not compounded).  
Plan 2: 2.0% of the base amount of benefit (increases are not compounded).

### **Employee Contributions**

Plan 1: 6.4% of total compensation.  
Plan 2: 4.7% of base salary and longevity pay (effective February 19, 2000).

### **City Contributions**

Actuarially determined amount which together with employee contributions and investment earnings will fund the obligations of the Plan in accordance with accepted actuarial principles.

### **Unused Sick Leave**

Each bi-weekly service credit of accumulated unused sick leave is converted to a service credit for the purpose of computing annual benefit amounts.

**Plan 3** is applicable to members employed after January 1, 1994 who have not become covered by Plan 2. Plan 3 members are automatically transferred to Plan 2 at the time they acquire 7 years of service unless they file an irrevocable election to remain in Plan 3.

### **Employee Contributions**

4.7% of compensation (effective 2/19/2000).

### **City Contributions**

4.7% of compensation, less forfeitures from non-vested terminations (effective 2/19/2000).



### **Vesting of Contributions**

Member contributions and investment earnings thereon are 100% vested.

City contributions and investment earnings thereon are 25% vested after 3 years of service, 50% vested after 5 years of service, and 100% vested after 7 years of service.

### **Distribution of Vested Accounts**

Vested accounts are payable upon termination of City employment or death. Available forms of payment are prescribed by the Board.

### **Disability Retirement**

Service and non-service connected disability benefits are the same as those of Plan 2.

Plan 3 members may alternatively elect to receive a refund of their Plan 3 account balance.

## Appendix C

### Actuarial Cost Method and Assumptions

#### Actuarial Cost Method

The actuarial cost method is a procedure for allocating the actuarial present value of pension benefits and expenses to time periods. The method used for the valuation is known as the Entry Age Normal actuarial cost method, and has the following characteristics.

- (i) The annual normal costs for each individual active member are sufficient to accumulate the value of the member's pension at time of retirement.
- (ii) Each annual normal cost is a constant percentage of the member's year-by-year projected covered compensation.

The Entry Age Normal actuarial cost method allocates the actuarial present value of each member's projected benefits on a level basis over the member's assumed pensionable compensation rates between the entry age of the member and the assumed exit ages.

The portion of the actuarial present value allocated to the valuation year is called the normal cost. The portion of the actuarial present value not provided for by the actuarial present value of future normal costs is called actuarial liability. Deducting actuarial assets from the actuarial liability determines the unfunded actuarial liability or (surplus). The unfunded actuarial liability/(surplus) is financed as a level percent of member payroll over an open 20 year period.

#### Actuarial Assumptions

Retirement System contribution requirements and actuarial present values are calculated by applying experience assumptions to the benefit provisions and people information of the Retirement System, using the actuarial cost method.

The principal areas of risk which require experience assumptions about future activities of the Retirement System are:

- (i) long-term rates of investment return to be generated by the assets of the System
- (ii) patterns of pay increases to members
- (iii) rates of mortality among members, retirants and beneficiaries
- (iv) rates of withdrawal of active members
- (v) rates of disability among active members
- (vi) the age patterns of actual retirements.

In making a valuation, the monetary effect of each assumption is calculated for as long as a present covered person survives - a period of time which can be as long as a century.

Actual experience of the Retirement System will not coincide exactly with assumed experience. Each valuation provides a complete recalculation of assumed future experience and takes into account all past differences between assumed and actual experiences. The result is a continual series of adjustments (usually small) to the computed contribution rate.

From time-to-time one or more of the assumptions are modified to reflect experience trends (but not random or temporary year-to-year fluctuations). A complete review of the actuarial assumptions was completed in 2009. The use of updated assumptions was effective with the December 31, 2009 valuation.

**Investment Return Rate** (net of administrative expenses). This assumption is 7.75% a year, compounded annually and consists of 3.50% long-term price inflation and a 4.25% real rate of return over price inflation. This assumption, used to equate the value of payments due at different points in time, was adopted by the Board and was first used for the December 31, 1981 valuation, although the allocation between inflation and real return has changed periodically, most recently in 2009.

**Salary Increase Rates.** These rates are used to project current pay amounts to those upon which a benefit will be based and were first used for the December 31, 2009 valuation.

Years of Service	Annual Rate of Salary Increase for Sample Ages			
	Inflation Component	Productivity Component	Merit and Longevity	Total
1	3.50%	0.50%	3.20%	7.20%
2	3.50	0.50	3.00	7.00
3	3.50	0.50	2.80	6.80
4	3.50	0.50	2.60	6.60
5	3.50	0.50	2.40	6.40
6	3.50	0.50	2.20	6.20
7	3.50	0.50	2.00	6.00
8	3.50	0.50	1.80	5.80
9	3.50	0.50	1.70	5.70
10	3.50	0.50	1.60	5.60
11	3.50	0.50	1.50	5.50
12	3.50	0.50	1.40	5.40
13	3.50	0.50	1.30	5.30
14	3.50	0.50	1.20	5.20
15	3.50	0.50	1.06	5.06
16	3.50	0.50	0.92	4.92
17	3.50	0.50	0.78	4.78
18	3.50	0.50	0.64	4.64
19	3.50	0.50	0.50	4.50
20	3.50	0.50	0.50	4.50
21	3.50	0.50	0.50	4.50
22	3.50	0.50	0.50	4.50
23	3.50	0.50	0.50	4.50
24	3.50	0.50	0.50	4.50
25	3.50	0.50	0.50	4.50
Over 25	3.50	0.50	0.25	4.25

The salary increase assumptions will produce 4.00% annual increases in active member payroll (the inflation and productivity base rate) given a constant active member group size. This is the same payroll growth assumption used to amortize the unfunded actuarial liability. The real rate of return over assumed wage growth is 3.75% per year.

Changes actually experienced in average pay and total payroll have been as follows:

	Year Ended					5 Year (Average) Compounded Annual Increase
	12/31/11	12/30/10	12/31/09	12/31/08	12/31/07	
Average pay	(1.1)%	1.1%	5.5%	2.2%	3.0%	2.1%
Total payroll	(10.0)%	(4.3)%	0.8%	3.1%	3.7%	(1.5)%

**Mortality Table.** This assumption is used to measure the probabilities of members dying before retirement and the probabilities of each pension payment being made after retirement.

Healthy Retirees

and Beneficiaries: RP-2000 Healthy Annuitant Tables (ages set forward 2 years for males, 0 for females)

Disabled Retirees: RP-2000 Disabled Table

Active Members: RP-2000 Employee Table (ages set forward 2 years for males, 0 for females)

The RP-2000 Tables are used with generational mortality for all except Disabled Retirees (no projection).

Sample Ages(1)	Present Value of \$1 Monthly for Life		Future Life Expectancy (Years)	
	Men	Women	Men	Women
50	\$136.27	\$141.98	30.4	34.6
55	128.67	135.41	25.7	29.7
60	118.41	127.04	21.2	25.1
65	150.86	116.91	16.9	20.7
70	91.20	104.80	13.0	16.7
75	75.12	90.90	9.7	13.0
80	58.98	75.76	6.9	9.8
85	44.42	60.20	4.8	7.1

(1) Ages in 2000

This table was first used for the December 31, 2004 actuarial valuation.

**Rates of Retirement and Deferred Retirement Option Plan (DROP) Elections.** These rates are used to measure the probability of eligible members retiring under either the regular retirement provisions or from the Deferred Retirement Option Plan.

**Percent Retiring During Year**

Retirement Age	Plan 1	Plan 2
55	15%	5%
56	15	5
57	15	5
58	15	5
59	15	5
60	40	5
61	40	5
62	20	30
63	20	30
64	20	40
65	100	40
66	N/A	30
67	N/A	30
68	N/A	30
69	N/A	30
70	N/A	100

In addition, the following assumptions would apply to members in this category:

**Plan 1:** 70% of members with 30 or more years of service will elect the DROP with an average DROP period of 48 months. The remaining 30% are assumed to retire immediately.

**Plan 2:** 70% of members with 33.33 or more years of service and are at least age 62 will elect the DROP with an average DROP period of 36 months.

All members of the retirement system were assumed to retire on or before age 70.

This assumption was first used in the December 31, 2009 actuarial valuation.

**Rates of Separation from Active Membership.** This assumption measures the probabilities of a member terminating employment. The rates do not apply to members who are eligible to retire.

Sample Ages	Years of Service	Probability of Terminating During Year
Any	0	25.00%
	1	19.00
	2	14.00
	3	11.00
	4	9.00
25	Over 4	9.00
30		7.00
35		5.25
40		4.00
45		3.50
50		2.50
55		1.50
60		1.50

This assumption was first used for the December 31, 2009 valuation.

**Administrative Expenses.** Assumed to be paid from investment earnings.

**Forfeiture of Vested Benefits.** The assumption is that a percentage of the actuarial present value of vested termination benefits will be forfeited by a withdrawal of accumulated contributions.

Years of Service	Percent Forfeiting
Under 15	60%
15 – 19	40%
20 – 24	20%
25 or more	0%

This table was first used for the December 31, 2004 actuarial valuation.

**Rates of Disability.** This assumption measures the probabilities of a member becoming disabled.

Sample Ages	% of Active Members Becoming Disabled During Next Year
25	0.02%
30	0.03
35	0.04
40	0.07
45	0.10
50	0.18
55	0.32
60	0.53

These rates were first used for the December 31, 2009 valuation.

Disabilities are assumed to be non-duty related.

**Active Member Group Size.** The number of active members was assumed to remain constant.

**Vested Deferred Pensions.** Amounts are assumed to increase during the deferral period at 4.0% per year. This assumption was first used for the December 31, 2009 valuation.

#### Miscellaneous and Technical Assumptions

<b>Marriage Assumption:</b>	70% of non-retired participants are assumed to be married for purposes of death benefits. In each case, the male was assumed to be 3 years older than the female.
<b>Pay Increase Timing:</b>	Assumed to occur mid-year.
<b>Decrement Timing:</b>	Decrements of all types are assumed to occur mid-year.
<b>Eligibility Testing:</b>	Eligibility for benefits is determined based upon the age nearest birthday and service nearest whole year at the start of the year in which the decrement is assumed to occur.
<b>Benefit Service:</b>	Service calculated to the nearest month as of the decrement date is used to determine the amount of benefit payable.
<b>Other:</b>	The turnover decrement does not operate during retirement eligibility.
<b>Miscellaneous Loading Factors:</b>	The calculated normal retirement benefits were increased by 4% to account for the inclusion of unused sick leave in the calculation of Service Credit. This assumption was changed with the December 31, 2004 valuation.
<b>Plan 3 Transfer Assumption:</b>	For purposes of the valuation, Plan 3 members are assumed to transfer to Plan 2 if they acquire 7 years of service. An additional reserve is held for the difference between the market and actuarial value of assets. This assumption was changed with the December 31, 2004 valuation.

## Appendix D

### Glossary of Terms

<b>Actuarial Liability</b>	The difference between the actuarial present value of system benefits and the actuarial value of future normal costs. Also referred to as “accrued liability” or “actuarial liability”.
<b>Actuarial Assumptions</b>	Estimates of future experience with respect to rates of mortality, disability, turnover, retirement, rate or rates of investment income and salary increases. Decrement assumptions (rates of mortality, disability, turnover and retirement) are generally based on past experience, often modified for projected changes in conditions. Economic assumptions (salary increases and investment income) consist of an underlying rate in an inflation-free environment plus a provision for a long-term average rate of inflation.
<b>Accrued Service</b>	Service credited under the system which was rendered before the date of the actuarial valuation.
<b>Actuarial Equivalent</b>	A single amount or series of amounts of equal actuarial value to another single amount or series of amounts, computed on the basis of appropriate assumptions.
<b>Actuarial Cost Method</b>	A mathematical budgeting procedure for allocating the dollar amount of the actuarial present value of retirement system benefit between future normal cost and actuarial liability. Sometimes referred to as the “actuarial funding method.”
<b>Experience Gain (Loss)</b>	The difference between actual experience and actuarial assumptions anticipated experience during the period between two actuarial valuation dates.
<b>Actuarial Present Value</b>	The amount of funds currently required to provide a payment or series of payments in the future. It is determined by discounting future payments at predetermined rates of interest and by probabilities of payment.
<b>Amortization</b>	Paying off an interest-discounted amount with periodic payments of interest and principal, as opposed to paying off with lump sum payment.
<b>Normal Cost</b>	The actuarial present value of retirement system benefits allocated to the current year by the actuarial cost method.
<b>Unfunded Actuarial Liability</b>	<p>The difference between actuarial liability and the valuation assets.</p> <p>Most retirement systems have unfunded actuarial liability. They arise each time new benefits are added and each time an actuarial loss is realized.</p> <p>The existence of unfunded actuarial liability is not in itself bad, any more than a mortgage on a house is bad. Unfunded actuarial liability does not represent a debt that is payable today. What is important is the ability to amortize the unfunded actuarial liability and the trend in its amount.</p>

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**Police and Fire Retirement System  
of Wichita, Kansas**

**Actuarial Valuation as of December 31, 2011**

Prepared by:  
**Milliman, Inc.**

**William V. Hogan, FSA, MAAA**  
Principal & Consulting Actuary

**Timothy J. Herman, FSA, MAAA**  
Consulting Actuary

April 3, 2012

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# Police and Fire Retirement System of Wichita, Kansas

Actuarial Valuation Report as of December 31, 2011

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April 3, 2012

The Board of Trustees  
Police and Fire Retirement System of Wichita, Kansas  
City Hall, 12<sup>th</sup> Floor  
455 N. Main Street  
Wichita, KS 67202

Dear Members of the Board:

At your request, we have performed an annual actuarial valuation of the Police and Fire Retirement System of Wichita, Kansas as of December 31, 2011 for determining the contribution rate for fiscal year 2013. The major findings of the valuation are contained in this report. This report reflects the benefit provisions in effect as of December 31, 2011. There were no changes in the actuarial methods or assumptions from the prior valuation.

In preparing this report, we relied, without audit, on information (some oral and some written) supplied by the System's staff. This information includes, but is not limited to, plan provisions, member data and financial information. In our examination of these data, we have found them to be reasonably consistent and comparable with data used for other purposes. Since the valuation results are dependent on the integrity of the data supplied, the results can be expected to differ if the underlying data is incomplete or missing. It should be noted that if any data or other information is inaccurate or incomplete, our calculations may need to be revised.

On the basis of the foregoing we hereby certify that, to the best of our knowledge and belief, this report is complete and accurate and has been prepared in accordance with generally recognized and accepted actuarial principles and practices which are consistent with the principles prescribed by the Actuarial Standards Board (ASB) and the Code of Professional Conduct and Qualification Standards for Public Statements of Actuarial Opinion of the American Academy of Actuaries.

We further certify that all costs, liabilities, rates of interest and other factors for the System have been determined on the basis of actuarial assumptions and methods which are individually reasonable (taking into account the experience of the System and reasonable expectations of future experience); and which, in combination, offer our best estimate of anticipated experience affecting the System. Nevertheless, the emerging costs will vary from those presented in this report to the extent actual experience differs from that projected by the actuarial assumptions. The Board of Trustees has the final decision regarding the appropriateness of the assumptions and adopted them as outlined in Appendix C.

Future actuarial measurements may differ significantly from the current measurements presented in this report due to such factors as the following: plan experience differing from that anticipated by the economic or demographic assumptions; changes in economic or demographic assumptions; increases or decreases expected as part of the natural operation of the methodology used for these measurements (such as the end of an amortization period or additional cost or contribution requirements based on the System's funded status); and changes in plan provisions or applicable law. Due to the limited scope of our assignment, we did not perform an analysis of the potential range of future measurements.

Actuarial computations presented in this report are for purposes of determining the actuarial contribution rates for funding the System. Actuarial computations presented in this report under GASB Statements No. 25, 27, and 50 are for purposes of fulfilling financial accounting requirements. The computations prepared for these two purposes may differ as disclosed in our report. The calculations in the enclosed report have been made on a basis consistent with our understanding of the System's funding requirements and goals, and of GASB Statements No. 25, 27, and 50. Determinations for purposes other than these requirements may be significantly different from the results contained in this report. Accordingly, additional determinations may be needed for other purposes.

Milliman's work product was prepared exclusively for the Police and Fire Retirement System of Wichita, Kansas for a specific and limited purpose. It is a complex, technical analysis that assumes a high level of knowledge concerning the Police and Fire Retirement System of Wichita, Kansas operations, and uses data from the Police and Fire Retirement System of Wichita, Kansas, which Milliman has not audited. It is not for the use or benefit of any third party for any purpose. Any third party recipient of Milliman's work product who desires professional guidance should not rely upon Milliman's work product, but should engage qualified professionals for advice appropriate to its own specific needs.

Any distribution of the enclosed report must be in its entirety including this cover letter, unless prior written consent is obtained from Milliman, Inc. This report has been prepared in accordance with the terms and provisions of the Consulting Services Agreement effective August 15, 2007.

We would like to express our appreciation to Barbara Davis, Pension Manager, and to members of her staff, who gave substantial assistance in supplying the data on which this report is based.

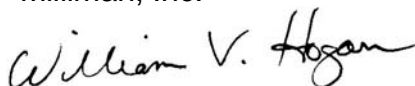
I, William V. Hogan, FSA, am an actuary for Milliman, Inc. I am a member of the American Academy of Actuaries and a Fellow of the Society of Actuaries, and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

I, Timothy J. Herman, FSA, am an actuary for Milliman, Inc. I am a member of the American Academy of Actuaries and a Fellow of the Society of Actuaries, and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

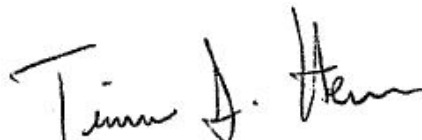
We herewith submit the following report and look forward to discussing it with you.

Respectfully Submitted,

Milliman, Inc.



William V. Hogan, FSA, MAAA  
Principal and Consulting Actuary



Timothy J. Herman, FSA, MAAA  
Consulting Actuary

WVH/TJH/cw

## Section 1

### Board Summary

---

#### OVERVIEW

This report presents the results of the December 31, 2011 actuarial valuation of the Police and Fire Retirement System of Wichita, Kansas (WPF). The primary purposes of performing a valuation are to:

- estimate the liabilities for the benefits provided by the System,
- determine the employer contribution rates required to fund the System on an actuarial basis,
- disclose certain asset and liability measures as of the valuation date,
- monitor any deviation between actual plan experience and experience projected by the actuarial assumptions, so that recommendations for assumption changes can be made when appropriate,
- analyze and report on any significant trends in contributions, assets and liabilities over the past several years.

There were no changes in the benefit provisions, actuarial assumptions, or actuarial methods from the last valuation.

The System had an unfunded actuarial liability of \$39.0 million in the December 31, 2010 valuation, which has increased in the December 31, 2011 valuation to an unfunded actuarial liability of \$51.5 million. A detailed analysis of the change in the unfunded actuarial liability from December 31, 2010 to December 31, 2011 is shown on page 3. The actuarial valuation results provide a “snapshot” view of the Plan’s financial condition on December 31, 2011. The valuation results reflect net unfavorable experience for the past plan year as demonstrated by an unfunded actuarial liability that was higher than expected based on the actuarial assumptions used in the December 31, 2010 actuarial valuation. Unfavorable experience on the actuarial value of assets resulted in a loss of \$16.7 million and favorable experience on liabilities resulted in a gain of \$5.2 million. Net experience was an actuarial loss of \$11.5 million.

The Plan uses an asset smoothing method in the valuation process. As a result, the plan’s funded status and the actuarial contribution rate are based on the actuarial (smoothed) value of assets – not the market value. On a market value basis, the rate of investment return was 0.4% in 2011. Because this is less than the actuarially assumed rate of return of 7.75%, it is considered to be an actuarial loss on investments. Under the asset smoothing method used in the valuation process, a portion of this investment loss is deferred to future years. Primarily because of this investment loss in 2011, the deferred (unrecognized) investment loss increased from \$30 million in the December 31, 2010 valuation to \$50 million in the December 31, 2011 valuation. Actual returns over the next few years will determine if and how, the \$50 million of deferred investment loss is recognized. For example, a return of 18% on the market value of assets in 2012 would be necessary to attain a return of 7.75% on the actuarial value of assets and offset the recognition of prior deferred losses in 2012.

In the following pages the change in the assets, liabilities, and contributions of the Plan over the last year are discussed in more detail.

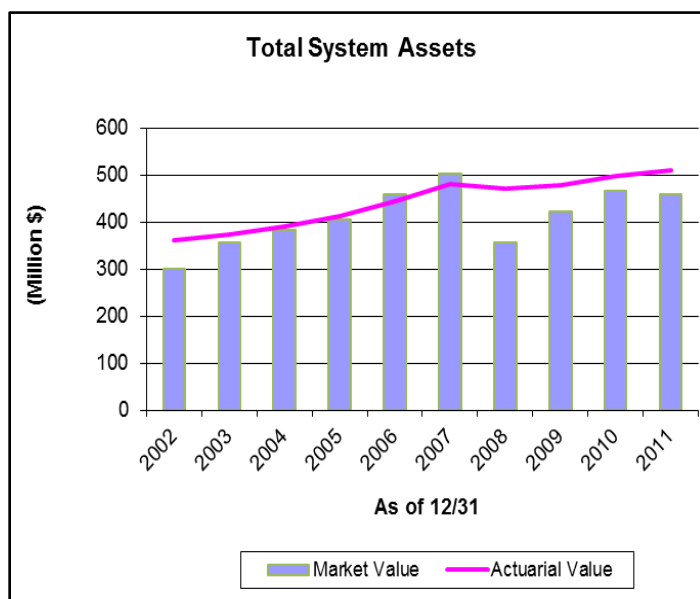
## ASSETS

As of December 31, 2011, the System had total assets, when measured on a market value basis, of \$461 million. This was a decrease of \$6 million from the December 31, 2010 figure of \$467 million. The market value of assets is not used directly in the calculation of the City's contribution rate. An asset valuation method, which smoothes the effect of market fluctuations, is used to determine the value of assets used in the valuation, called the "actuarial value of assets". The actuarial value of assets is equal to the expected value (calculated using the actuarial assumed rate of 7.75%) plus 25% of the difference between the market and expected value. See Table 3 on page 12 for a detailed development of the actuarial value of assets. The rate of return on the actuarial value of assets was 4%. Due to less than expected return on the market value of assets on average over the past 4 years, the actuarial value of assets remains 11% higher than the actual market value.

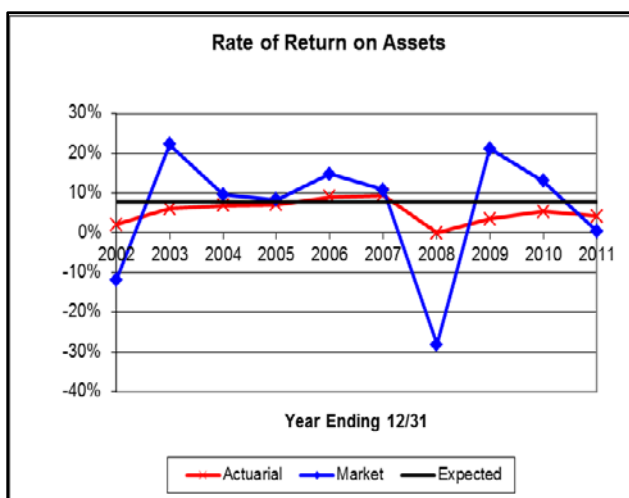
The components of the change in the market and actuarial value of assets for the Retirement System (in millions) are set forth below:

	Market Value (\$M)	Actuarial Value (\$M)
Assets, December 31, 2010	\$467.5	\$497.9
▪ City and Member Contributions	18.2	18.2
▪ Benefit Payments and Refunds	(26.8)	(26.8)
▪ Investment Income (net of expenses)	1.9	21.6
Assets, December 31, 2011	\$460.8	\$510.9

The unrecognized investment losses represent about 11% of the market value of assets. Unless offset by future investment gains or other favorable experience, the recognition of the \$50 million loss is expected to have an impact on the future funded ratio and actuarial contribution requirement. If the deferred losses were recognized immediately in the actuarial value of assets, the funded percentage would decrease from 91% to 82% and the actuarially determined contribution rate would increase from 22.8% to 28.2%.



*The actuarial value of assets has both been greater than and less than the market value of assets during this period, which is expected when using a smoothing method.*



*The rate of return on the actuarial value of assets has been less volatile than the market value return, which is the main reason for using an asset smoothing method.*

## LIABILITIES

The actuarial liability is that portion of the present value of future benefits that will not be paid by future employer normal costs or member contributions. The difference between this liability and asset values at the same date is referred to as the unfunded actuarial liability (UAL), or (surplus) if the asset value exceeds the actuarial liability. The unfunded actuarial liability will be reduced if the employer's contributions exceed the employer's normal cost for the year, after allowing for interest earned on the previous balance of the unfunded actuarial liability. Benefit improvements, experience gains and losses, and changes in actuarial assumptions and procedures will also impact the total actuarial liability and the unfunded portion thereof.

The Actuarial Liability and Unfunded Actuarial Liability for the System as of December 31, 2011 are:

Actuarial Liability	\$562,487,887
Actuarial Value of Assets	510,946,217
Unfunded Actuarial Liability/(Surplus)	51,541,670

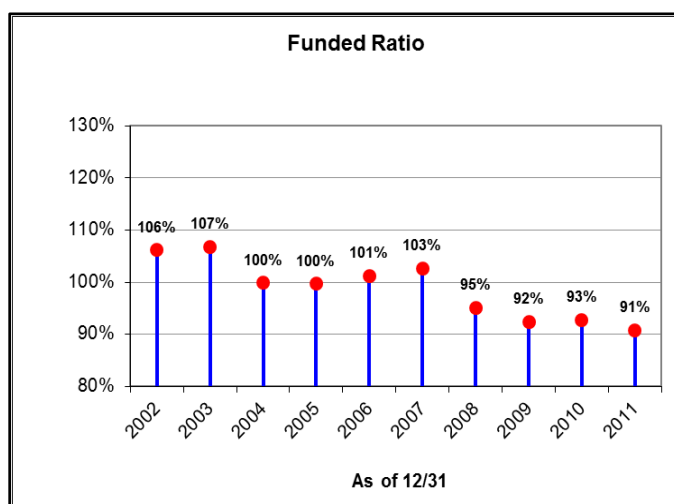
Between December 31, 2010 and December 31, 2011, the change in the unfunded actuarial liability for the System was as follows (in millions):

Change in Unfunded Actuarial Liability	\$(M)
UAL, December 31, 2010	\$39.0
+ Normal cost for year	15.7
+ Assumed investment return for year	4.2
- Actual contributions (member + City)	18.2
- Assumed investment return on contributions	0.7
= Expected Unfunded Actuarial Liability, December 31, 2011	40.0
+ Change from amendments	0.0
+ Change from assumption changes	0.0
= Expected UAL after changes	40.0
Actual UAL, December 31, 2011	51.5
Experience gain/(loss) (Expected UAL – Actual UAL)	\$(11.5)

The experience loss for the 2011 plan year of \$11.5 million reflects the combined impact of an actuarial loss of about \$16.7 million on System assets (actuarial value), and an actuarial gain of about \$5.2 million on System liabilities.

Analysis of the unfunded actuarial liability strictly as a dollar amount can be misleading. Another way to evaluate the unfunded actuarial liability and the progress made in its funding is to track the funded status, the ratio of the actuarial value of assets to the actuarial liability. This information for recent years is shown below (in millions). Historical information is shown in the graph following the chart.

	12/31/07	12/31/08	12/31/09	12/31/10	12/31/11
Actuarial Liability (\$M)	\$468.1	\$496.6	\$519.9	\$536.9	\$562.5
Actuarial Value of Assets (\$M)	480.8	472.3	480.6	497.9	510.9
Funded Ratio (Actuarial Value)	102.7%	95.1%	92.4%	92.7%	90.8%
Funded Ratio (Market Value)	107.6%	71.7%	81.2%	87.1%	81.9%



Over the past decade, the funded status of the Retirement System has both improved and declined. The assumption changes and actuarial loss in 2004 caused the funded ratio to decline sharply. The strong asset performance in 2006 and 2007 returned the System to a surplus funded situation. The significant decline in the stock market in 2008 again dropped the funded ratio. The rebound of the stock market in 2009 and 2010 has helped stabilize the System's funded status.

As mentioned earlier in this report, due to the asset smoothing method there is currently about a \$50 million difference between the actuarial value and the market value of assets. To the extent there is not favorable investment experience to offset the deferred losses, the \$50 million loss will be recognized in future years and the System's funded status will decline. The System's funded status will be heavily dependent on investment returns in the next few years.

## CONTRIBUTION RATES

Generally, contributions to the System consist of:

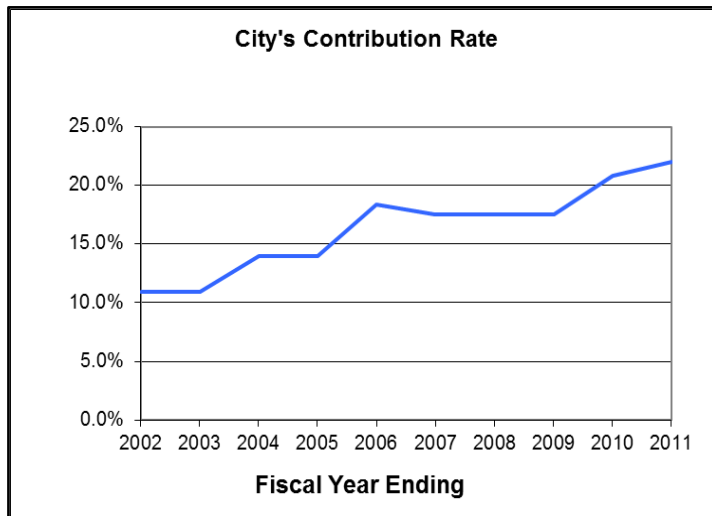
- a "normal cost" for the portion of projected liabilities allocated to service of members during the year following the valuation date, by the actuarial cost method, and
- an "unfunded actuarial liability or (surplus) contribution" for the excess of the portion of projected liabilities allocated to service to date over the actuarial value of assets.

Contribution rates are computed with the objective of developing costs that are level as a percentage of covered payroll. The contribution rate for fiscal year 2013 is based on the December 31, 2011 actuarial valuation results.



As of December 31, 2011, the actuarial liability exceeds the actuarial value of assets so an unfunded actuarial liability (UAL) exists. In accordance with State statutes, the UAL is to be amortized over a rolling 20-year period. Amortization of the UAL results in a contribution to fund the UAL in addition to the normal cost rate. This valuation indicates the City's contribution should be 22.8% of pay (17.2% employer normal cost rate plus 5.6% UAL contribution).

A summary of the City's historical contribution rate for the System is shown below:



*The City's Contribution Rate will be 22.0% and 22.8% for the Fiscal Year Ending 12/31/2012 and 12/31/2013, respectively.*

## COMMENTS

The stock market losses in 2008 are still impacting most public retirement plans. Favorable investment returns in 2009 and 2010 have helped alleviate some of the 2008 losses. However, the 2011 return of 0.4% has resulted in a setback to this improvement. The System utilizes an asset smoothing method to smooth out the peaks and valleys of investment returns. Under the asset smoothing method, the actuarial value of assets is determined as 75% of the expected value (using the 7.75% actuarial assumed rate of return) and 25% of actual market value. Due to the use of an asset smoothing method, the December 31, 2011 valuation reflected a return on the actuarial value of assets of 4%.

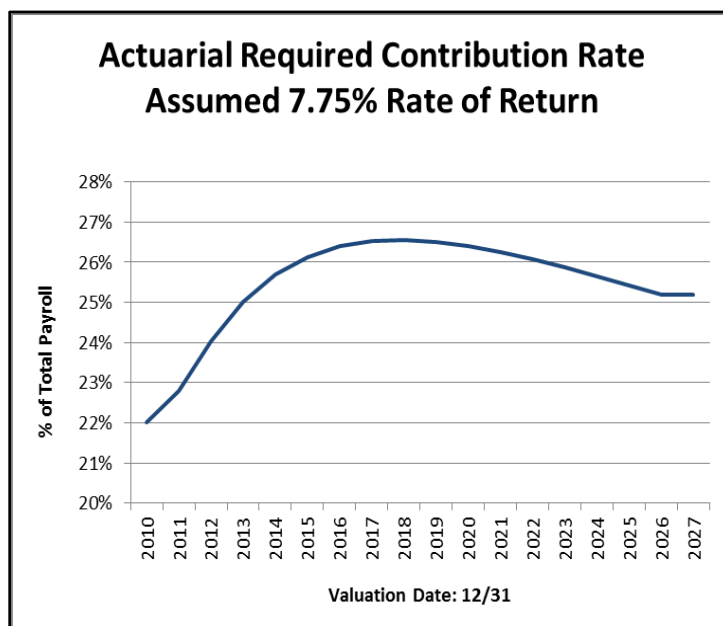
The deferred investment loss has grown considerably since last year. Given the size of the deferred investment loss (\$50M), the System's funded status could decrease and the actuarial contribution rate increase in future valuations absent favorable experience to offset the impact of the deferred losses. The City should be prepared for higher contribution rates in the next few years, and perhaps longer, depending on future rates of return. Favorable asset returns in 2009 and 2010 have helped stabilize this issue; however, the 0.4% return on market value in 2011 created a larger deferred investment loss.

While the use of an asset smoothing method is a common procedure for public retirement systems, it is important to identify the potential impact of the deferred (unrecognized) investment experience. The key valuation results from the December 31, 2011 actuarial valuation are shown on the following page using both the actuarial value of assets and the pure market value.

	Using Actuarial Value of Assets	Using Market Value of Assets
Actuarial Liability	\$562,487,887	\$562,487,887
Asset Value	510,946,217	460,840,745
Unfunded Actuarial Liability	51,541,670	101,647,142
Funded Ratio	90.8%	81.9%
Normal Cost Rate	24.2%	24.2%
UAL Contribution Rate	<u>5.6%</u>	<u>11.0%</u>
Total Contribution Rate	29.8%	35.2%
Employee Contribution Rate	<u>(7.0%)</u>	<u>(7.0%)</u>
Employer Contribution Rate	22.8%	28.2%

The asset smoothing method impacts only the timing of recognizing the actual market experience on the assets. Due to deferred investment experience from 2008 and 2011, the actuarial value of assets exceeds the pure market value by 11%, despite strong returns in 2009 and 2010. If there are not higher returns than 7.75% consistently over the next few years, the \$50 million of deferred investment experience will be recognized and the ultimate impact on the employer contribution rate can be expected to be similar to the column shown above using market value of assets.

The following graph shows the expected increase in the employer contribution rate in future years if 7.75% is earned in all future years and the full actuarial contribution rate is made by the City in all future years.



*The projected Actuarial Required Contribution Rate increased approximately 2% over the projection period from the December 31, 2010 report. This is a result of the \$50 million of deferred investment experience, of which \$20 million was accrued in 2011.*

## SUMMARY OF PRINCIPAL RESULTS

1. PARTICIPANT DATA	12/31/2011 <u>Valuation</u>	12/31/2010 <u>Valuation</u>	<u>% Change</u>
Number of:			
Active Members			
Police	623	628	(0.8)%
Fire	465	461	0.9%
Total	<u>1,088</u>	<u>1,089</u>	(0.1)%
Retired Members and Beneficiaries	911	892	2.1%
Inactive Members	35	35	0.0%
Total Members	2,034	2,016	0.9%
Annual Valuation Payroll of Active Members			
Police	\$ 38,455,658	\$ 38,591,483	(0.4)%
Fire	25,727,491	25,505,372	0.9%
Total	<u>64,183,149</u>	<u>64,096,855</u>	0.1%
Annual Retirement Payments for Retired Members and Beneficiaries	\$ 24,030,607	\$ 22,570,141	6.5%
<b>2. ASSETS AND LIABILITIES</b>			
Total Actuarial Liability	\$ 562,487,887	\$ 536,908,438	4.8%
Market Value of Assets	460,840,745	467,487,721	(1.4)%
Actuarial Value of Assets	510,946,217	497,925,786	2.6%
Unfunded Actuarial Liability/(Surplus)	\$ 51,541,670	\$ 38,982,652	32.2%
Funded Ratio	90.8%	92.7%	(2.1)%
<b>3. EMPLOYER CONTRIBUTION RATES AS A PERCENT OF PAYROLL</b>			
Normal Cost	24.2%	24.8%	(2.4)%
Member Financed	7.0%	7.0%	0.0%
Employer Normal Cost	17.2%	17.8%	(3.4)%
Amortization of Unfunded Actuarial Liability or (Surplus)	5.6%	4.2%	33.3%
Employer Contribution Rate	22.8%	22.0%	3.6%

## Section 2

### Scope of the Report

---

This report presents the actuarial valuation of the Police and Fire Retirement System of Wichita, Kansas (WPF) as of December 31, 2011. This valuation was prepared at the request of the System's Board of Trustees. The report is based on plan provisions and actuarial assumptions that are unchanged from last year.

Please pay particular attention to our cover letter, where the guidelines employed in the preparation of this report are outlined. We also comment on the sources and reliability of both the data and the actuarial assumptions upon which our findings are based. Those comments are the basis for our certification that this report is complete and accurate to the best of our knowledge and belief.

A summary of the findings resulting from this valuation is presented in the previous section. Section 3 describes the assets and investment experience of the System. Sections 4 and 5 describe how the obligations of the System are to be met under the actuarial cost method in use. Section 6 includes the information required for the financial reporting standards established by the Governmental Accounting Standards Board (GASB).

This report includes several appendices:

- Appendix A Schedules of valuation data classified by various categories of members.
- Appendix B A summary of the current benefit structure, as determined by the provisions of governing law on the valuation date.
- Appendix C A summary of the actuarial methods and assumptions used to estimate liabilities and determine contribution rates.
- Appendix D A glossary of actuarial terms.

## Section 3

### Assets

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In many respects, an actuarial valuation can be thought of as an inventory process. The inventory is taken as of the actuarial valuation date, which for this valuation is December 31, 2011. On that date, the assets available for the payment of benefits are appraised. The assets are compared with the liabilities of the System. The actuarial process then leads to a method of determining the contributions needed by members and the employer in the future to balance the System assets and liabilities.

#### Market Value of Assets

The current market value represents the “snapshot” or “cash-out” value of System assets as of the valuation date. In addition, the market value of assets provides a basis for measuring investment performance from time to time. At December 31, 2011, the market value of assets for the System was \$461 million. Table 1 is a comparison, at market values, of System assets as of December 31, 2011, and December 31, 2010, in total and by investment category. Table 2 summarizes the change in the market value of assets from December 31, 2010 to December 31, 2011.

#### Actuarial Value of Assets

Neither the market value of assets, representing a “cash-out” value of System assets, nor the book values of assets, representing the cost of investments, may be the best measure of the System’s ongoing ability to meet its obligations.

To arrive at a suitable value for the actuarial valuation, a technique for determining the actuarial value of assets is used which dampens swings in the market value while still indirectly recognizing market values. This methodology, first adopted for the December 31, 2002 valuation, smoothes market experience by recognizing 25% of the difference between expected value (based on the actuarial assumption) and market value. Table 3 shows the development of the actuarial value of assets (AVA) as of December 31, 2011.

**TABLE 1**  
**Analysis of Net Assets at Market Value**

	As of December 31, 2011			As of December 31, 2010		
	Amount (\$ Millions)	% of Total		Amount (\$ Millions)	% of Total	
Cash and Equivalents	\$ 0.4	0.1	%	\$ 0.3	0.1	%
Government Securities	30.9	6.7		36.3	7.8	
Corporate debt	46.7	10.1		50.4	10.8	
Mortgage Backed Securities	43.3	9.4		47.5	10.2	
Pooled Funds	81.8	17.8		80.4	17.2	
Domestic Equity	158.6	34.4		172.4	36.9	
International Equity	71.6	15.5		78.4	16.8	
Real Estate	16.2	3.5		13.9	3.0	
Timber	4.9	1.1		0.0	0.0	
Commodities	12.4	2.7		0.0	0.0	
Securities Lending Collateral Pool	44.2	9.6		55.7	11.9	
Other	0.2	0.0		0.3	0.0	
Receivables	13.7	3.0		18.5	4.0	
Liabilities	(64.1)	(13.9)		(86.6)	(18.5)	
<b>Total</b>	<b>\$ 460.8</b>	<b>100.0</b>	<b>%<sup>(1)</sup></b>	<b>\$ 467.5</b>	<b>100.0</b>	<b>%<sup>(1)</sup></b>

<sup>(1)</sup> Numbers may not add to 100.0% due to rounding.

**TABLE 2**  
**Summary of Changes in Net Assets**  
**During Year Ended December 31, 2011**

(Market Value)

1. Market Value of Assets as of December 31, 2010	\$ 467,487,721
2. Contributions:	
a. Members	\$ 4,403,425
b. City	13,806,880
c. Total [2(a) + 2(b)]	\$ 18,210,305
3. Investment Income:	
a. Interest and Dividends	\$ 13,196,725
b. Net Depreciation in Fair Value	(8,880,404)
c. Commission Recapture	27,574
d. Net Securities Lending Income	198,521
e. Total [3(a) + 3(b) + 3(c) + 3(d)]	\$ 4,542,416
4. Expenditures:	
a. Refunds of Member Contributions	\$ 636,120
b. Benefits Paid:	
(1) Pension and Death Benefits	23,238,567
(2) Back DROP Payments	2,877,779
c. Administrative Expenses	508,914
d. Investment Expenses	2,138,317
e. Total [4(a) + 4(b) + 4(c) + 4(d)]	\$ 29,399,697
5. Net Change: [2(c) + 3(e) - 4(e)]	\$ (6,646,976)
6. Market Value of Assets as of December 31, 2011 (1) + (5)	\$ 460,840,745

**TABLE 3**  
**Development of Actuarial Value of Assets**  
**as of December 31, 2011**

1. Actuarial Value of Assets as of December 31, 2010	\$ 497,925,786
2. Actual Contribution/Disbursements	
a. Contributions	\$ 18,210,305
b. Benefit Payments and Refunds	<u>(26,752,466)</u>
c. Net (a + b)	\$ (8,542,161)
3. Expected Value of Assets as of December 31, 2011 $[(1) \times 1.0775] + [(2c) \times (1.0775)^{-5}]$	\$ 527,648,041
4. Market Value of Assets as of December 31, 2011	\$ 460,840,745
5. Difference Between Market and Expected Values (4) - (3)	\$ (66,807,296)
6. Actuarial Value of Assets as of December 31, 2011 (3) + [(5) x 25%]	\$ 510,946,217
7. Actuarial Value of Assets divided by Market Value of Assets (6) / (4)	110.9%
8. Market Value of Assets less Actuarial Value of Assets (4) - (6)	\$ (50,105,472)



## Section 4

### System Liabilities

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In the previous section, an actuarial valuation was compared with an inventory process, and an analysis was given of the inventory of assets of the System as of the valuation date, December 31, 2011. In this section, the discussion will focus on the commitments of the System, which are referred to as its liabilities.

Table 4 contains an analysis of the actuarial present value of all future benefits (PVFB) for contributing members, inactive members, retirees and their beneficiaries.

The liabilities summarized in Table 4 include the actuarial present value of all future benefits expected to be paid with respect to each member. For an active member, this value includes the measurement of both benefits already earned and future benefits to be earned. For all members, active and retired, the value extends over benefits earnable and payable for the rest of their lives and for the lives of the surviving beneficiaries.

All liabilities reflect the benefit provisions in place as of December 31, 2011.

#### Actuarial Liability

A fundamental principle in financing the liabilities of a retirement program is that the cost of its benefits should be related to the period in which benefits are earned, rather than to the period of benefit distribution. An actuarial cost method is a mathematical technique that allocates the present value of future benefits into annual costs. In order to do this allocation, it is necessary for the funding method to “breakdown” the present value of future benefits into two components:

- (1) that which is attributable to the past and
- (2) that which is attributable to the future.

Actuarial terminology calls the part attributable to the past the “past service liability” or the “actuarial liability”. The portion allocated to the future is known as the present value of future normal costs, with the specific piece of it allocated to the current year being called the “normal cost”. Table 5 contains the calculation of actuarial liability for the System. The Entry Age Normal actuarial cost method is used to develop the actuarial liability.

**TABLE 4**  
**Present Value of Future Benefits (PVFB)**  
**as of December 31, 2011**

	<b>Plans</b>		
	<b><u>A and B</u></b>	<b><u>Plan C</u></b>	<b><u>Total</u></b>
1. Active employees			
a. Retirement Benefit	\$ 12,462,616	\$ 344,962,278	\$ 357,424,894
b. Pre-Retirement Death Benefit	8,154	5,087,830	5,095,984
c. Withdrawal Benefit	0	12,608,736	12,608,736
d. Disability Benefit	48,133	55,469,438	55,517,571
e. Total	\$ 12,518,903	\$ 418,128,282	\$ 430,647,185
2. Inactive Vested Members	\$ 0	\$ 10,416,244	\$ 10,416,244
3. In Pay Members			
a. Retirees	\$ 154,223,250	\$ 51,187,782	\$ 205,411,032
b. Disabled Members	18,123,590	32,684,261	50,807,851
c. Beneficiaries	21,663,750	5,431,814	27,095,564
d. Total	\$ 194,010,590	\$ 89,303,857	\$ 283,314,447
4. Total Present Value of Future Benefits (1e) + (2) + (3d)	\$ 206,529,493	\$ 517,848,383	\$ 724,377,876

TABLE 5

**Actuarial Liability  
as of December 31, 2011**

	<b>Plans</b>		
	<b><u>A and B</u></b>	<b><u>Plan C</u></b>	<b><u>Total</u></b>
1. Active employees			
a. Present Value of Future Benefits	\$ 12,518,903	\$ 418,128,282	\$ 430,647,185
b. Present Value of Future Normal Costs	459,335	161,430,654	161,889,989
c. Actuarial Liability (1a) - (1b)	\$ <u>12,059,568</u>	\$ <u>256,697,628</u>	\$ <u>268,757,196</u>
2. Inactive Vested Members	\$ 0	\$ 10,416,244	\$ 10,416,244
3. In Pay Members			
a. Retirees	\$ 154,223,250	\$ 51,187,782	\$ 205,411,032
b. Disabled Members	18,123,590	32,684,261	50,807,851
c. Beneficiaries	21,663,750	5,431,814	27,095,564
d. Total	\$ <u>194,010,590</u>	\$ <u>89,303,857</u>	\$ <u>283,314,447</u>
4. Total Actuarial Liability (1c) + (2) + (3d)	\$ 206,070,158	\$ 356,417,729	\$ 562,487,887

TABLE 6

**Present Value of Accrued Benefits  
as of December 31, 2011**

The present value of accrued benefits for the System reflects the benefits earned based on service, earnings, and the System provisions as of the valuation date. It also reflects the on-going nature of the System by using the same actuarial assumptions as are used for funding purposes. Further, because the System provides that the accrued benefits of deferred vested members are indexed until benefits begin, the present value of the accrued benefit liability for active members reflects this provision from the assumed termination of employment to the assumed benefit commencement date.

	<b>Plans</b>			<b>Plan C</b>			<b>Total</b>
	<b><u>A and B</u></b>						
1. Active Members	\$	12,394,754	\$	202,066,332	\$	214,461,086	
2. Inactive Vested Members	\$	0	\$	10,416,244	\$	10,416,244	
3. In Pay Members							
a. Retirees	\$	154,223,250	\$	51,187,782	\$	205,411,032	
b. Disabled Members		18,123,590		32,684,261		50,807,851	
c. Beneficiaries		21,663,750		5,431,814		27,095,564	
d. Total	\$	<u>194,010,590</u>	\$	<u>89,303,857</u>	\$	<u>283,314,447</u>	
4. Total	\$	206,405,344	\$	301,786,433	\$	508,191,777	
5. Market Value of Assets*	\$	187,173,419	\$	273,667,326	\$	460,840,745	
6. Funded Ratio (5)/(4)		91%		91%		91%	

\* Split of assets between Plans A and B and Plan C is in proportion to the liabilities for illustrative purposes only.

## Section 5

### Employer Contributions

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The previous two sections were devoted to a discussion of the assets and liabilities of the System. A comparison of Tables 3 and 4 indicates that current assets fall short of meeting the present value of future benefits (total liability). This is expected in all but a completely closed fund, where no further contributions are anticipated. In an active system, there will almost always be a difference between the actuarial value of assets and total liabilities. This deficiency has to be made up by future contributions and investment returns. An actuarial valuation sets out a schedule of future contributions that will deal with this deficiency in an orderly fashion.

The method used to determine the incidence of the contributions in various years is called the actuarial cost method. Under an actuarial cost method, the contributions required to meet the difference between current assets and current liabilities are allocated each year between two elements: (1) the normal cost rate and (2) the unfunded actuarial liability contribution rate.

The term “fully funded” is often applied to a system in which contributions at the normal cost rate are sufficient to pay for the benefits of existing employees as well as for those of new employees. More often than not, systems are not fully funded, either because of past benefit improvements that have not been completely funded or because of actuarial deficiencies that have occurred because experience has not been as favorable as anticipated. Under these circumstances, an unfunded actuarial liability (UAL) exists. Likewise, when the actuarial value of assets is greater than the actuarial liability, a surplus exists.

#### Description of Contribution Rate Components

The Entry Age Normal (EAN) actuarial cost method is used for the valuation. Under this method, the normal cost for each year from entry age to assumed exit age is a constant percentage of the member's year by year projected compensation. The portion of the present value of future benefits not provided by the present value of future normal costs is the actuarial liability. The unfunded actuarial liability/(surplus) represents the difference between the actuarial liability and the actuarial value of assets as of the valuation date. The unfunded actuarial liability is calculated each year and reflects experience gains/losses.

In general, contributions are computed in accordance with a level percent-of-payroll funding objective. The contribution rates based on this December 31, 2011 actuarial valuation will be used to determine employer contribution rates to the Police and Fire Retirement System of Wichita, Kansas for fiscal year 2013. In this context, the term “contribution rate” means the percentage, which is applied to a particular active member payroll to determine the actual employer contribution amount (i.e., in dollars) for the group.

As of December 31, 2011, the valuation assets were less than the actuarial liability so an unfunded actuarial liability exists. State statutes require any unfunded actuarial liability in municipal police and fire retirement systems to be amortized over a rolling 20-year period. The amortization of the UAL results in an employer contribution that is more than the employer normal cost rate.

#### Contribution Rate Summary

In Table 7, the amortization payment related to the unfunded actuarial liability/(surplus), as of December 31, 2011, is developed. Table 8 develops the normal cost rate for the System. The derivation of the contribution rate for the City is shown in Table 9. Table 10 shows the historical summary of the City's contribution rates. Table 11 develops the experience gain/(loss) for the year ended December 31, 2011.

The rates shown in this report are based on the actuarial assumptions and cost methods described in Appendix C.

**TABLE 7**  
**Derivation of Unfunded Actuarial Liability Contribution Rate**

1. Actuarial Accrued Liability	\$	562,487,887
2. Actuarial Value of Assets	\$	510,946,217
3. Unfunded Actuarial Liability/(Surplus)	\$	51,541,670
4. Payment (Adjusted to Mid-Year) to Amortize Unfunded Actuarial Liability/(Surplus) Over 20 Years *	\$	3,668,281
5. Total Projected Payroll for the Year	\$	65,611,379
6. Amortization Payment as a Percent of Payroll		5.6%

\* The UAL is amortized as a level percent of payroll over a rolling 20-year period.

**TABLE 8**  
**Derivation of Normal Cost Rate**

Normal Cost for Year End December 31, 2011		
Service pensions	\$	10,506,796
Disability pensions		3,565,725
Survivor pensions		345,652
Termination benefits		
- Deferred service pensions		569,506
- Return of member contributions		<u>401,184</u>
Total Normal Cost	\$	15,388,863
Covered Payroll for Members Under Certain Retirement Age	\$	63,572,379 *
Total Normal Cost Rate for Year		24.2%

\* *Effective with the 12/31/05 valuation, this amount includes payroll for all Plan A members who are past certain retirement age under Plan A assumptions, but not under Plan C assumptions.*

TABLE 9

**Employer Contribution Rates for Fiscal Year Commencing in 2013**

	<b>Contribution Requirement as % of Payroll</b>
Normal Cost	
Service pensions	16.6 %
Disability pensions	5.6 %
Survivor pensions	0.5 %
Termination benefits	
- Deferred service pensions	0.9 %
- Return of member contributions	0.6 %
Total Normal Cost	24.2 %
Unfunded Actuarial Liability	
Retired members and beneficiaries (1)	0.0 %
Active and former members (2)	5.6 %
Total UAL Contribution	5.6 %
Total Contribution Requirement	
Member Financed Portion (3)	7.0 %
City Financed Portion	22.8 %
Total	29.8 %

- (1) *Actuarial accrued liability for retired members and beneficiaries was fully funded as of December 31, 2011.*
- (2) *The excess of the actuarial liability over actuarial value of assets is amortized as a level percent of active member payroll over a rolling 20-year period.*
- (3) *The weighted average of member contribution rates: 8.0% for Plan A and 7.0% for Plan C.*



TABLE 10

### Historical Summary of City Contribution Rates

Contribution rates are computed in accordance with a level percent of payroll funding objective. As of December 31, 2011, the actuarial value of assets is less than actuarial liabilities resulting in an unfunded actuarial liability (UAL). The UAL is amortized over a rolling 20-year period.

<u>Valuation Date</u>	<u>Fiscal Year</u>	<b>City Contributions as Percents of Active Member Pensionable Payroll</b>	
		<u>Funding Objective</u>	<u>Amortization (Credit)/Payment</u>
11/30/92	1994	23.3%	-%
11/30/93	1995	22.7	-
11/30/94	1996	22.6	-
12/31/95	1997	18.3 <sup>(1)</sup>	-
12/31/96	1998	17.5	-
12/31/97	1999	15.2 – 15.9	(0.7)
12/31/98	2000	12.3 – 15.9	(3.6)
12/31/99 <sup>(2)</sup>	2001	9.6 – 16.8	(7.2)
12/31/00	2002	8.2 – 16.8	(8.7)
12/31/01	2003	10.0 – 16.8	(6.8)
12/31/02	2004	14.0 – 17.0	(3.0)
12/31/03	2005	13.6 – 17.0	(3.4)
12/31/04 <sup>(3)</sup>	2006	18.4	0.1
12/31/05	2007	17.5	0.2
12/31/06	2008	16.8 – 17.5	(0.7)
12/31/07	2009	16.0 – 17.5	(1.5)
12/31/08	2010	20.8	2.7
12/31/09 <sup>(4)</sup>	2011	22.0	4.3
12/31/10	2012	22.0	4.2
12/31/11	2013	22.8%	5.6%

(1) Reflects allocation of assets to fully fund retired life liabilities.

(2) Includes benefit provision and assumption changes and 1% decrease in member contribution rate.

(3) Reflects assumption changes and elimination of surplus assets.

(4) Reflects assumption changes.

TABLE 11

## Derivation of System Experience Gain/(Loss)

	(\$M) Year Ended <u>12/31/11</u>
(1) UAL* at start of year	39.0
(2) + Normal cost for year	15.7
(3) + Assumed investment return on (1) & (2)	4.2
(4) - Actual contributions (member + City)	18.2
(5) - Assumed investment return on (4)	0.7
(6) = Expected UAL at end of year	40.0
(7) + Increase (decr.) from amendments	0.0
(8) + Increase (decr.) from assumption change	0.0
(9) = Expected UAL after changes	40.0
(10) = Actual UAL at year end	51.5
(11) = Experience gain (loss) (9) – (10)	(11.5)**
(12) = Percent of beginning of year AL	2.1%

\* Unfunded Actuarial Liability/(Surplus)

\*\* Of this amount, \$16.7 million of the experience loss is due to an experience loss on the actuarial value of assets and \$5.2 million represents an experience gain on liabilities.

## Section 6

### Accounting Information

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The actuarial liability is a measure intended to help the reader assess (i) a retirement system's funded status on an on-going concern basis, and (ii) progress being made toward accumulating the assets needed to pay benefits as due. Allocation of the actuarial present value of projected benefits between past and future service was based on service using the Entry Age Normal actuarial cost method. Assumptions, including projected pay increases, were the same as used to determine the System's level percent of payroll annual required contribution between entry age and assumed exit age. Entry age was established by subtracting credited service from current age on the valuation date.

The preceding methods comply with the financial reporting standards established by the Governmental Accounting Standards Board.

The Entry Age Normal actuarial liability was determined as part of an actuarial valuation of the plan as of December 31, 2011. Significant actuarial assumptions used in determining the actuarial liability include:

- (a) a rate of return on the investment of present and future assets of 7.75% per year compounded annually,
- (b) projected salary increases of 4.00% per year compounded annually, (3.50% attributable to inflation, and 0.50% attributable to productivity),
- (c) additional projected salary increases of 1.0% to 2.75% per year attributable to seniority/merit, and
- (d) the assumption that benefits will increase 2.0% per year of retirement, non-compounded commencing 36 months after retirement.

Actuarial Liability:

Active members	\$268,757,196
Retired members and beneficiaries currently receiving benefits	283,314,447
Vested terminated members not yet receiving benefits	<u>10,416,244</u>
Total Actuarial Liability	\$562,487,887
Actuarial Value of Assets (market value was \$460,840,745)	\$510,946,217
Unfunded Actuarial Liability	\$ 51,541,670

During the year ended December 31, 2011, the Plan experienced a net increase of \$26 million in the actuarial liability.

TABLE 12

**Required Supplementary Information  
Schedule of Funding Progress**

<b>Actuarial Valuation Date</b>	<b>Actuarial Value of Assets (a)</b>	<b>Actuarial Liability (AL) (b)</b>	<b>Unfunded AL (UAL) (b)-(a)</b>	<b>Funded Ratio (a)/(b)</b>	<b>Active Member Covered Payroll (c)</b>	<b>UAL as a Percentage of Active Member Covered Payroll ((b-a)/c)</b>
11/30/92	\$165,132	\$198,656	\$33,524	83.1%	\$25,000	134.1%
11/30/93	180,457	208,966	28,509	86.4	26,008	109.6
11/30/94	192,668	220,596	27,928	87.3	27,819	100.4
12/31/95 <sup>(1)</sup>	213,431	231,372	17,941	92.2	29,749	60.3
12/31/96	237,554	247,408	9,854	96.0	33,366	29.5
12/31/97	262,815	258,706	(4,109)	101.6	35,502	(11.6)
12/31/98	295,625	274,900	(20,725)	107.5	36,566	(56.7)
12/31/99 <sup>(1)</sup>	330,072	291,633	(38,439)	113.2	37,969	(101.2)
12/31/00	354,044	308,894	(45,150)	114.6	38,613	(116.9)
12/31/01	362,493	325,335	(37,158)	111.4	42,286	(87.9)
12/31/02	361,687	340,524	(21,163)	106.2	45,696	(46.3)
12/31/03	374,171	350,444	(23,726)	106.8	45,876	(51.7)
12/31/04 <sup>(1)</sup>	392,485	393,387	902	99.8	50,414	1.8
12/31/05	412,823	414,027	1,204	99.7	52,207	2.3
12/31/06	444,498	439,179	(5,319)	101.2	53,530	(9.9)
12/31/07	480,820	468,115	(12,705)	102.7	57,310	(22.2)
12/31/08	472,345	496,561	24,216	95.1	60,282	40.2
12/31/09 <sup>(1)</sup>	480,556	519,934	39,379	92.4	63,055 <sup>(2)</sup>	62.5 <sup>(2)</sup>
12/31/10	497,926	536,908	38,982	92.7	63,077	61.8
12/31/11	510,946	562,488	51,542	90.8	62,759	82.1

*Rounded dollar amounts are in thousands.*

(1) After changes in benefits and/or actuarial assumptions and/or actuarial cost methods.

(2) These amounts have been revised from the \$63,479,000 and 62.0% amounts reported in the December 31, 2009 actuarial valuation report.

Analysis of the dollar amounts of actuarial value of assets, actuarial liability, or unfunded actuarial liability in isolation can be misleading. Expressing the actuarial value of assets as a percentage of the actuarial liability provides one indication of the System's funded status on an on-going concern basis. Analysis of this percentage over time indicates whether the System is becoming financially stronger or weaker. Generally, the greater this percentage, the stronger the plan's funding. The unfunded actuarial liability and annual covered payroll are both affected by inflation. Expressing the unfunded actuarial liability as a percentage of covered payroll approximately adjusts for the effects of inflation and aids analysis of the progress being made in accumulating sufficient assets to pay benefits when due. Generally, the smaller this percentage, the stronger the plan's funding.

TABLE 13

**Required Supplementary Information  
Schedule of Employer Contributions**

<b>Fiscal Year</b>	<b>Actuarial Valuation Date</b>	<b>Annual Required Contribution</b>	<b>Percent Contribution</b>
1997	12/31/95	\$6,343,027	100.0%
1998	12/31/96	6,427,744	100.0
1999	12/31/97	6,043,455	100.0
2000	12/31/98	5,540,575	100.0
2001	12/31/99	4,796,863	100.0
2002	12/31/00	4,746,504	100.0
2003	12/31/01	5,043,505	100.0
2004	12/31/02	6,925,467	100.0
2005	12/31/03	7,308,916	100.0
2006	12/31/04	9,849,536	100.0
2007	12/31/05	10,029,253	100.0
2008	12/31/06	10,549,401	100.0
2009	12/31/07	11,034,552	100.0
2010	12/31/08	13,119,984	100.0
2011	12/31/09	13,806,880	100.0

**Notes to Required Supplementary Information  
Summary of Actuarial Methods and Assumptions**

Valuation Date	December 31, 2011
Actuarial Cost Method	Entry Age Normal
Amortization Method	Level percent of payroll, open
Remaining Amortization Period	20 years
Asset Valuation Method	Expected + 25% of (Market – Expected Values)
Actuarial Assumptions:	
Investment Rate of Return*	7.75%
Projected Salary Increases*	5.00% - 6.75%
* Includes Inflation at	3.50%
Cost-of-Living Adjustments	2.00% non-compounding commencing 36 months after retirement

**TABLE 14**  
**Solvency Test**

<b>Aggregate Actuarial Liability For</b>							
<b>Valuation Date</b>	<b>(1) Active Member Contributions</b>	<b>(2) Retirants and Beneficiaries*</b>	<b>(3) Active Members (Employer Financed Portion)</b>	<b>Reported Valuation Assets</b>	<b>Portion of Actuarial Liabilities Covered by Reported Assets</b>		
					<b>(1)</b>	<b>(2)</b>	<b>(3)</b>
11/30/94	\$18,003,627	\$127,670,273	\$ 74,921,662	\$192,667,974	100.0%	100.0%	62.7%
12/31/95	19,597,012	132,215,980	79,559,050	213,431,416	100.0	100.0	77.4
12/31/96	20,807,624	141,902,560	84,497,686	237,553,602	100.0	100.0	88.6
12/31/97	22,518,199	146,068,362	90,119,236	262,814,796	100.0	100.0	104.6
12/31/98	23,845,658	157,021,415	94,033,095	295,624,986	100.0	100.0	122.0
12/31/99	24,759,118	170,478,501	96,395,412	330,071,866	100.0	100.0	139.9
12/31/00	27,152,206	183,463,718	98,277,967	354,044,311	100.0	100.0	145.9
12/31/01	27,694,761	183,034,623	114,605,637	362,493,060	100.0	100.0	132.4
12/31/02	34,440,696	182,063,498	124,019,921	361,687,109	100.0	100.0	117.1
12/31/03	37,027,041	186,930,565	126,486,746	374,170,781	100.0	100.0	118.8
12/31/04	40,959,525	201,051,248	151,375,876	392,484,697	100.0	100.0	99.4
12/31/05	44,057,922	210,560,068	159,408,592	412,822,760	100.0	100.0	99.2
12/31/06	48,361,719	216,449,174	174,368,239	444,497,827	100.0	100.0	103.1
12/31/07	53,686,866	230,893,426	183,534,348	480,820,001	100.0	100.0	106.9
12/31/08	58,050,319	238,590,747	199,920,080	472,345,191	100.0	100.0	87.9
12/31/09	60,326,408	257,298,665	202,309,181	480,555,562	100.0	100.0	80.5
12/31/10	63,515,814	270,693,677	202,698,947	497,925,786	100.0	100.0	80.8
12/31/11	66,390,179	293,730,691	202,367,017	510,946,217	100.0	100.0	74.5

During the twelve months ended December 31, 2011, the Wichita Police and Fire Retirement System of Wichita, Kansas generated a net loss of \$11.5 million. The amount is 2.1% of the actuarial liability at the beginning of the year.

\*Includes vested terminated members.

**Appendix A**  
**Summary of Membership Data**

**MEMBER DATA RECONCILIATION**  
December 31, 2010 to December 31, 2011

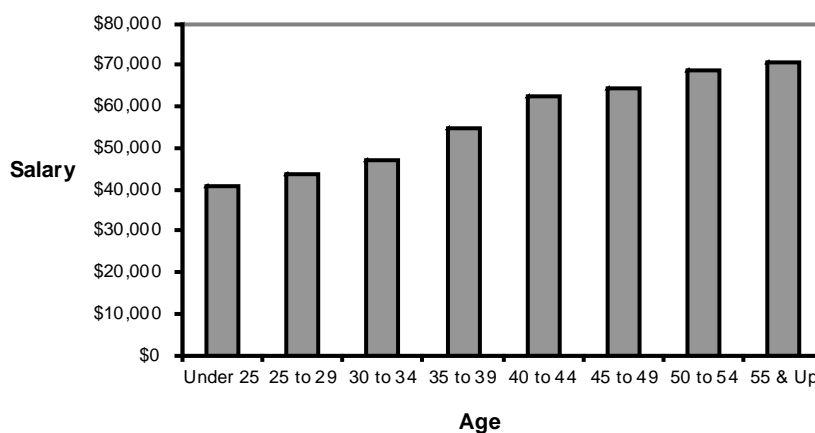
The number of members included in the valuation, as summarized in the table below, is in accordance with the data submitted by the System for members as of the valuation date.

	Active Participants		Retirees & Beneficiaries		Terminated Vested		Total
	Police	Fire	Police	Fire	Police	Fire	
Members as of 12/31/10	628	461	426	466	28	7	2,016
New Members	+25	+26	+5	+8	0	0	+64
Transfers	-3	+3	0	0	0	0	0
Terminations							
Refunded	-10	-7	0	0	0	0	-17
Deferred Vested	-5	-2	0	0	+5	+2	0
Completion of payments to minor child	0	0	0	0	0	0	0
Retirements							
Service	-9	-15	+14	+17	-5	-1	+1
Disability	-3	-1	+3	+1	0	0	0
Deaths							
Cashed Out	0	0	0	0	0	0	0
With Beneficiary	0	0	-3	-8	0	0	-11
Without Beneficiary	0	0	-6	-12	0	0	-18
Data Adjustments	0	0	0	0	-1	0	-1
<b>Members as of 12/31/11</b>	<b>623</b>	<b>465</b>	<b>439</b>	<b>472</b>	<b>27</b>	<b>8</b>	<b>2,034</b>

**Summary of Active Members  
as of December 31, 2011**

Age	Number			Valuation Salaries		
	Fire	Police	Total	Fire	Police	Total
Under 25	13	7	20	\$ 512,232	\$ 305,038	\$ 817,270
25 to 29	60	66	126	2,455,693	3,038,175	5,493,868
30 to 34	91	100	191	4,004,077	5,006,614	9,010,691
35 to 39	61	114	175	3,105,348	6,454,632	9,559,980
40 to 44	77	146	223	4,427,461	9,444,466	13,871,927
45 to 49	72	94	166	4,442,831	6,269,421	10,712,252
50 to 54	59	71	130	3,832,004	5,104,764	8,936,768
55 & Up	32	25	57	2,237,715	1,782,037	4,019,752
Total	465	623	1,088	\$ 25,017,361	\$ 37,405,147	\$ 62,422,508

**Average Salary by Age**



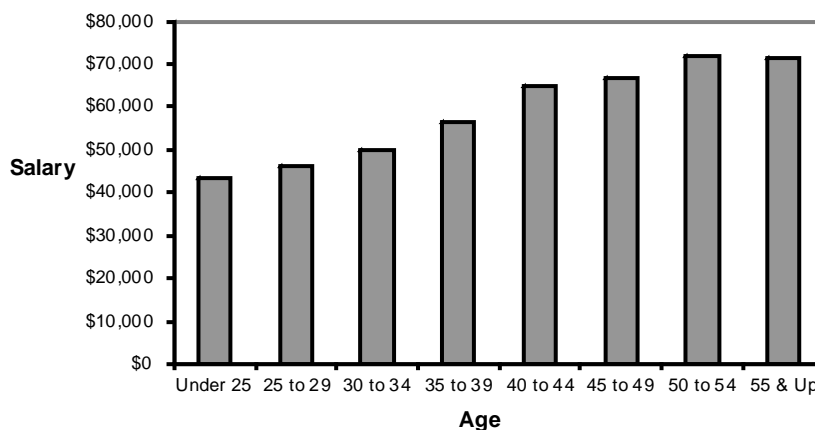


**Summary of Active Members  
as of December 31, 2011**

**Police**

Age	Number			Valuation Salaries		
	Male	Female	Total	Male	Female	Total
Under 25	5	2	7	\$ 216,008	\$ 89,030	\$ 305,038
25 to 29	55	11	66	2,535,501	502,674	3,038,175
30 to 34	85	15	100	4,258,532	748,082	5,006,614
35 to 39	94	20	114	5,359,711	1,094,921	6,454,632
40 to 44	130	16	146	8,484,016	960,450	9,444,466
45 to 49	90	4	94	6,001,667	267,754	6,269,421
50 to 54	64	7	71	4,582,439	522,325	5,104,764
55 & Up	22	3	25	1,586,673	195,364	1,782,037
Total	545	78	623	\$ 33,024,547	\$ 4,380,600	\$ 37,405,147

**Average Salary by Age**

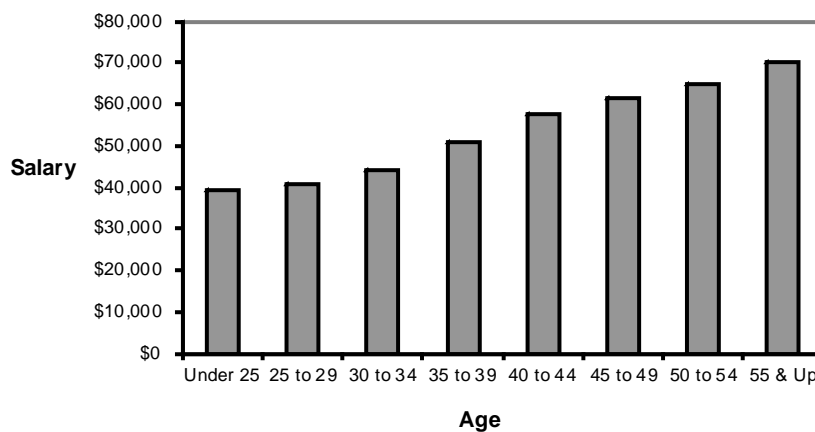


**Summary of Active Members  
as of December 31, 2011**

**Fire**

Age	Number			Valuation Salaries		
	Male	Female	Total	Male	Female	Total
Under 25	13	0	13	\$ 512,232	\$ 0	\$ 512,232
25 to 29	59	1	60	2,417,605	38,088	2,455,693
30 to 34	89	2	91	3,918,352	85,725	4,004,077
35 to 39	60	1	61	3,055,816	49,532	3,105,348
40 to 44	77	0	77	4,427,461	0	4,427,461
45 to 49	69	3	72	4,271,087	171,744	4,442,831
50 to 54	58	1	59	3,752,079	79,925	3,832,004
55 & Up	32	0	32	2,237,715	0	2,237,715
Total	457	8	465	\$ 24,592,347	\$ 425,014	\$ 25,017,361

**Average Salary by Age**

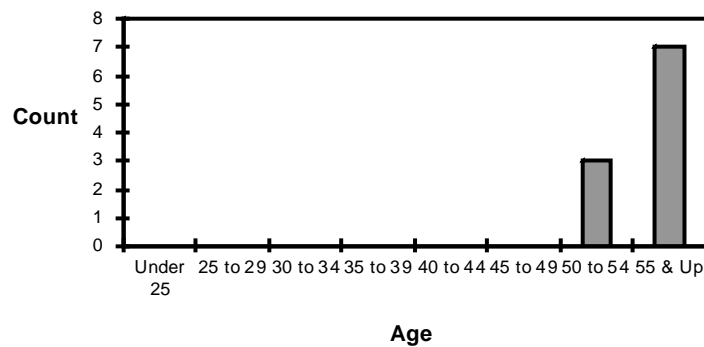


**Distribution of Active Members  
as of December 31, 2011**

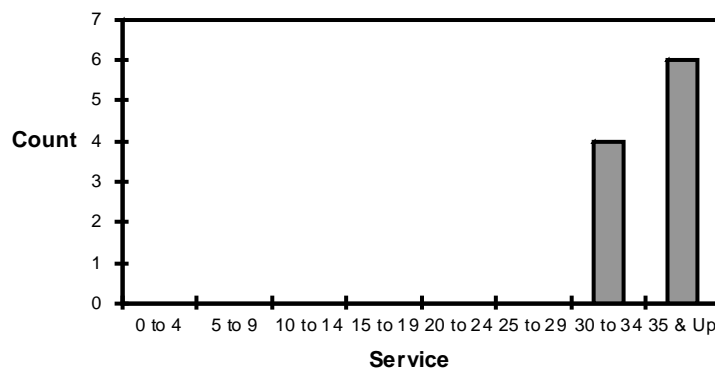
**Fire - Plan A**

Age	Years of Service								Total
	0 to 4	5 to 9	10 to 14	15 to 19	20 to 24	25 to 29	30 to 34	35 & Up	
Under 25	0	0	0	0	0	0	0	0	0
25 to 29	0	0	0	0	0	0	0	0	0
30 to 34	0	0	0	0	0	0	0	0	0
35 to 39	0	0	0	0	0	0	0	0	0
40 to 44	0	0	0	0	0	0	0	0	0
45 to 49	0	0	0	0	0	0	0	0	0
50 to 54	0	0	0	0	0	0	3	0	3
55 & Up	0	0	0	0	0	0	1	6	7
Total	0	0	0	0	0	0	4	6	10

**Age Distribution**



**Service Distribution**

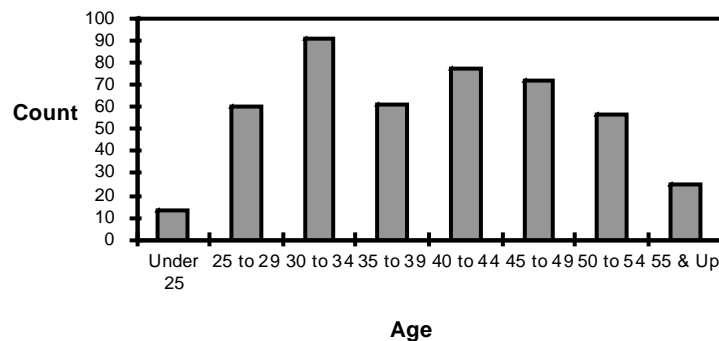


**Distribution of Active Members  
as of December 31, 2011**

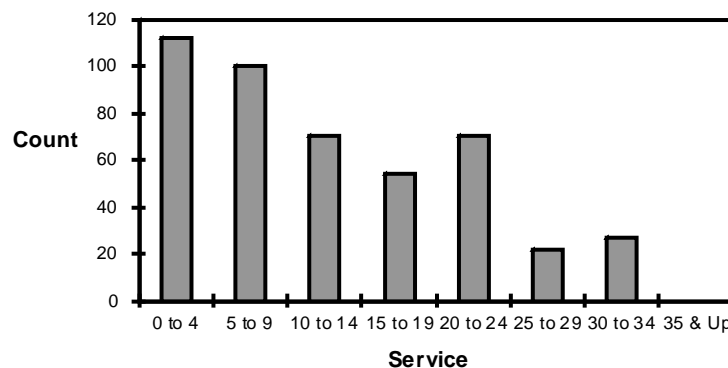
**Fire - Plan C**

Age	Years of Service								Total
	0 to 4	5 to 9	10 to 14	15 to 19	20 to 24	25 to 29	30 to 34	35 & Up	
Under 25	13	0	0	0	0	0	0	0	13
25 to 29	48	12	0	0	0	0	0	0	60
30 to 34	39	48	4	0	0	0	0	0	91
35 to 39	7	25	23	6	0	0	0	0	61
40 to 44	5	11	28	21	12	0	0	0	77
45 to 49	0	3	9	19	33	8	0	0	72
50 to 54	0	1	5	6	18	8	18	0	56
55 & Up	0	0	1	2	7	6	9	0	25
Total	112	100	70	54	70	22	27	0	455

**Age Distribution**



**Service Distribution**

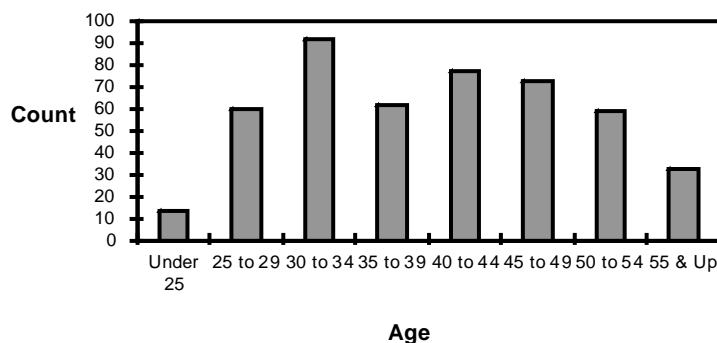


**Distribution of Active Members  
as of December 31, 2011**

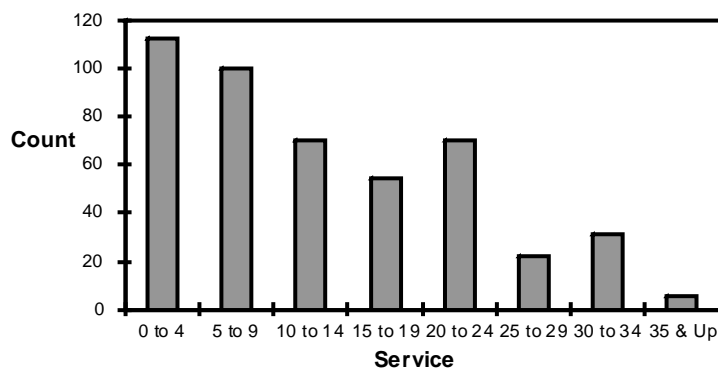
**Fire**

Age	Years of Service								Total
	0 to 4	5 to 9	10 to 14	15 to 19	20 to 24	25 to 29	30 to 34	35 & Up	
Under 25	13	0	0	0	0	0	0	0	13
25 to 29	48	12	0	0	0	0	0	0	60
30 to 34	39	48	4	0	0	0	0	0	91
35 to 39	7	25	23	6	0	0	0	0	61
40 to 44	5	11	28	21	12	0	0	0	77
45 to 49	0	3	9	19	33	8	0	0	72
50 to 54	0	1	5	6	18	8	21	0	59
55 & Up	0	0	1	2	7	6	10	6	32
Total	112	100	70	54	70	22	31	6	465

**Age Distribution**



**Service Distribution**

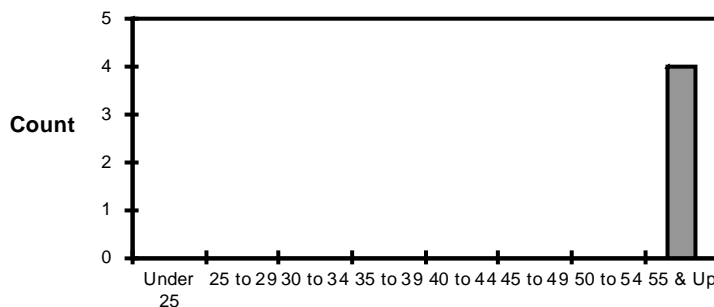


**Distribution of Active Members  
as of December 31, 2011**

**Police - Plan A**

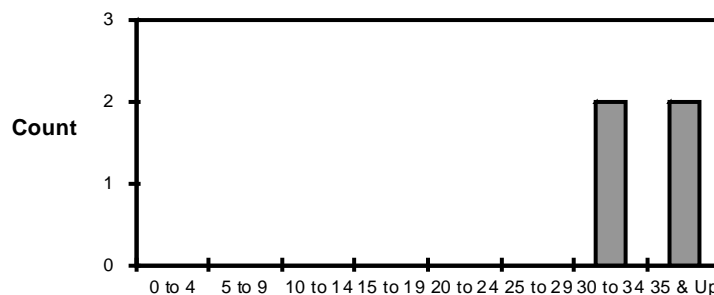
Age	Years of Service								Total
	0 to 4	5 to 9	10 to 14	15 to 19	20 to 24	25 to 29	30 to 34	35 & Up	
Under 25	0	0	0	0	0	0	0	0	0
25 to 29	0	0	0	0	0	0	0	0	0
30 to 34	0	0	0	0	0	0	0	0	0
35 to 39	0	0	0	0	0	0	0	0	0
40 to 44	0	0	0	0	0	0	0	0	0
45 to 49	0	0	0	0	0	0	0	0	0
50 to 54	0	0	0	0	0	0	0	0	0
55 & Up	0	0	0	0	0	0	2	2	4
Total	0	0	0	0	0	0	2	2	4

**Age Distribution**



**Age**

**Service Distribution**



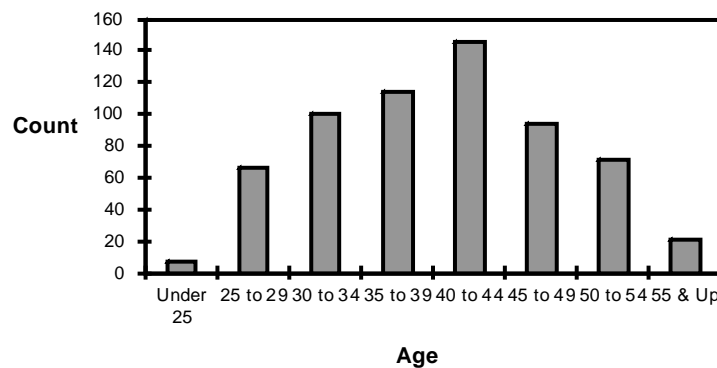
**Service**

**Distribution of Active Members  
as of December 31, 2011**

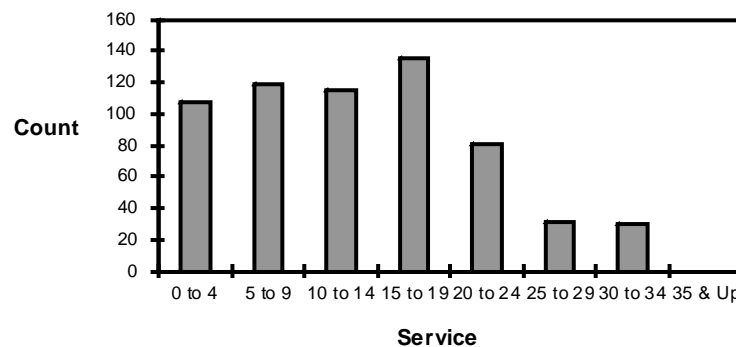
**Police - Plan C**

Age	Years of Service								Total
	0 to 4	5 to 9	10 to 14	15 to 19	20 to 24	25 to 29	30 to 34	35 & Up	
Under 25	7	0	0	0	0	0	0	0	7
25 to 29	53	13	0	0	0	0	0	0	66
30 to 34	33	56	11	0	0	0	0	0	100
35 to 39	9	31	55	19	0	0	0	0	114
40 to 44	2	10	39	77	18	0	0	0	146
45 to 49	2	5	8	30	39	10	0	0	94
50 to 54	1	4	0	7	19	19	21	0	71
55 & Up	0	0	2	2	5	3	9	0	21
Total	107	119	115	135	81	32	30	0	619

**Age Distribution**



**Service Distribution**



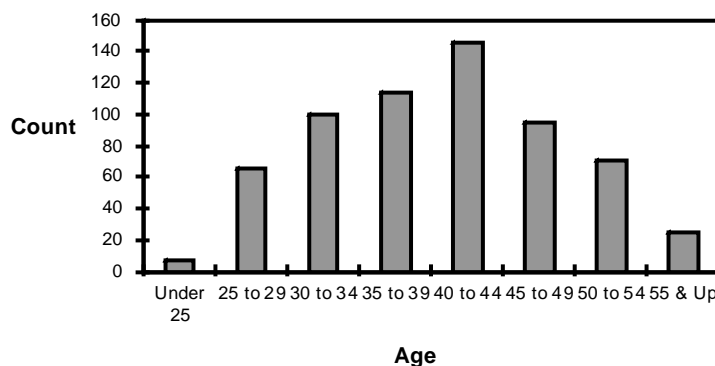
**Distribution of Active Members  
as of December 31, 2011**

**Police**

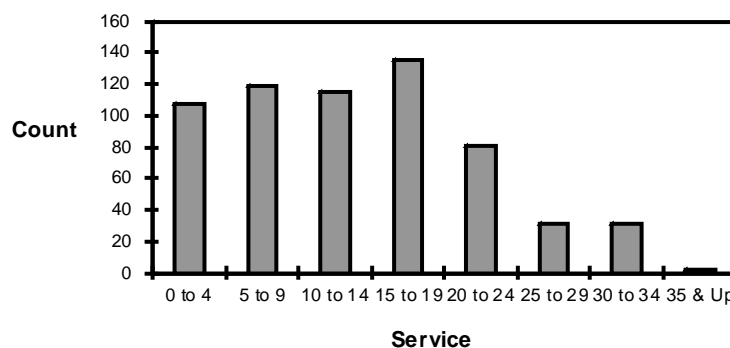
**Years of Service**

Age	0 to 4	5 to 9	10 to 14	15 to 19	20 to 24	25 to 29	30 to 34	35 & Up	Total
Under 25	7	0	0	0	0	0	0	0	7
25 to 29	53	13	0	0	0	0	0	0	66
30 to 34	33	56	11	0	0	0	0	0	100
35 to 39	9	31	55	19	0	0	0	0	114
40 to 44	2	10	39	77	18	0	0	0	146
45 to 49	2	5	8	30	39	10	0	0	94
50 to 54	1	4	0	7	19	19	21	0	71
55 & Up	0	0	2	2	5	3	11	2	25
Total	107	119	115	135	81	32	32	2	623

**Age Distribution**



**Service Distribution**





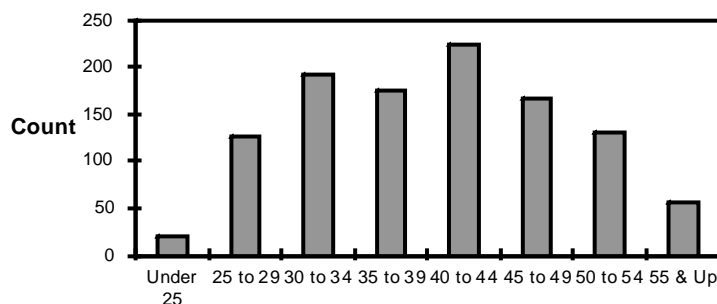
**Distribution of Active Members  
as of December 31, 2011**

**Fire & Police**

**Years of Service**

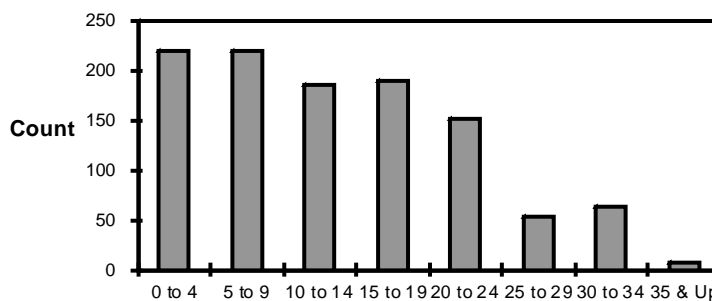
Age	0 to 4	5 to 9	10 to 14	15 to 19	20 to 24	25 to 29	30 to 34	35 & Up	Total
Under 25	20	0	0	0	0	0	0	0	20
25 to 29	101	25	0	0	0	0	0	0	126
30 to 34	72	104	15	0	0	0	0	0	191
35 to 39	16	56	78	25	0	0	0	0	175
40 to 44	7	21	67	98	30	0	0	0	223
45 to 49	2	8	17	49	72	18	0	0	166
50 to 54	1	5	5	13	37	27	42	0	130
55 & Up	0	0	3	4	12	9	21	8	57
Total	219	219	185	189	151	54	63	8	1,088

**Age Distribution**



**Age**

**Service Distribution**



**Service**

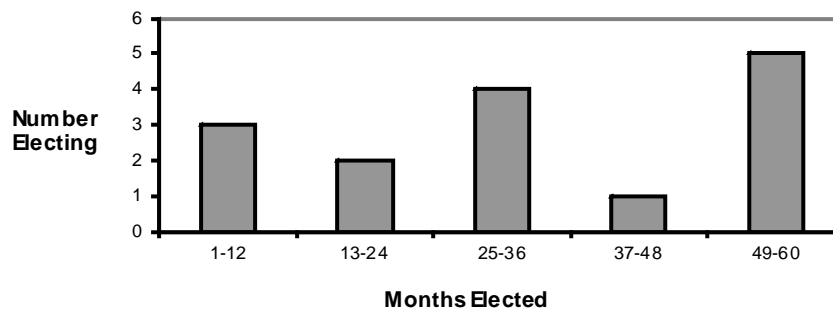
## BackDROP Experience for the 2011 Plan Year

### Fire

#### Number Electing BackDROP

Age	Final Benefit as a Proportion of Final Average Pay					Total
	Under 55%	55%-60%	60%-65%	65%-70%	70%-75%	
Under 55	3	1	0	0	3	7
55-59	1	1	2	2	1	7
60-64	0	0	0	0	0	0
65+	0	1	0	0	0	1
Total	4	3	2	2	4	15

#### Distribution of BackDROP Election Period



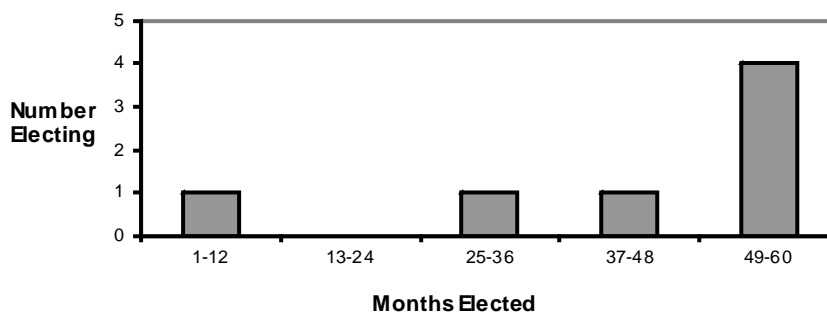
## BackDROP Experience for the 2011 Plan Year

### Police

#### Number Electing BackDROP

Age	Final Benefit as a Proportion of Final Average Pay					Total
	Under 55%	55%-60%	60%-65%	65%-70%	70%-75%	
Under 55	1	0	0	0	0	1
55-59	0	0	1	1	1	3
60-64	0	1	0	1	1	3
65+	0	0	0	0	0	0
Total	1	1	1	2	2	7

#### Distribution of BackDROP Election Period



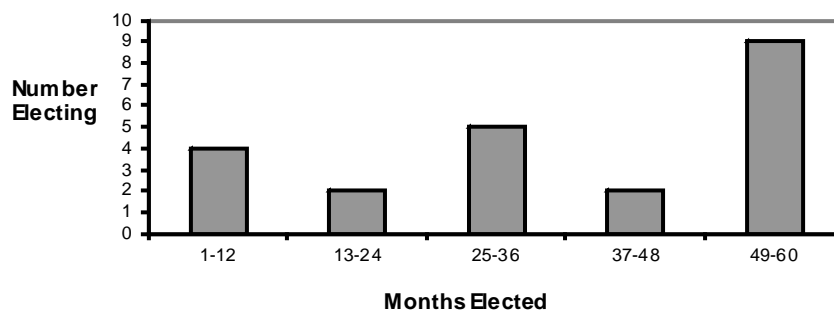
## BackDROP Experience for the 2011 Plan Year

### Fire & Police

#### Number Electing BackDROP

Age	Final Benefit as a Proportion of Final Average Pay					Total
	Under 55%	55%-60%	60%-65%	65%-70%	70%-75%	
Under 55	4	1	0	0	3	8
55-59	1	1	3	3	2	10
60-64	0	1	0	1	1	3
65+	0	1	0	0	0	1
Total	5	4	3	4	6	22

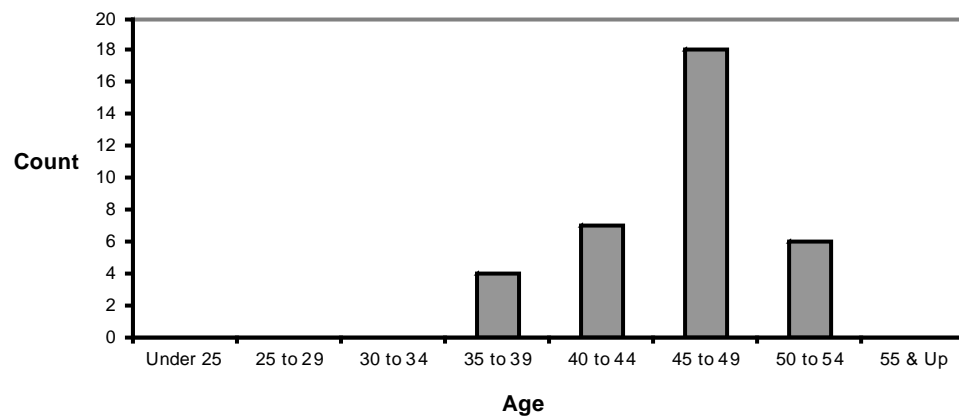
#### Distribution of BackDROP Election Period



**Summary of Deferred Vested Members  
as of December 31, 2011**

Age	Number			Current Monthly Benefit at Retirement		
	Fire	Police	Total	Fire	Police	Total
Under 25	0	0	0	\$ 0	\$ 0	\$ 0
25 to 29	0	0	0	0	0	0
30 to 34	0	0	0	0	0	0
35 to 39	1	3	4	1,472	3,809	5,281
40 to 44	1	6	7	1,232	14,380	15,611
45 to 49	5	13	18	13,125	33,213	46,338
50 to 54	1	5	6	1,769	9,139	10,908
55 & Up	0	0	0	0	0	0
Total	8	27	35	\$ 17,597	\$ 60,541	\$ 78,138

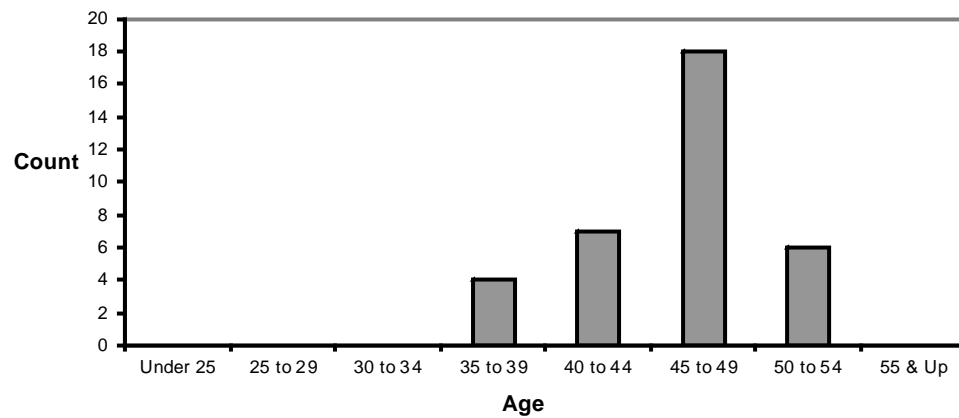
**Age Distribution**



**Summary of Deferred Vested Members  
as of December 31, 2011**

Age	Number			Current Monthly Benefit at Retirement		
	Male	Female	Total	Male	Female	Total
Under 25	0	0	0	\$ 0	\$ 0	\$ 0
25 to 29	0	0	0	0	0	0
30 to 34	0	0	0	0	0	0
35 to 39	3	1	4	4,123	1,158	5,281
40 to 44	7	0	7	15,611	0	15,611
45 to 49	18	0	18	46,338	0	46,338
50 to 54	5	1	6	9,841	1,067	10,908
55 & Up	0	0	0	0	0	0
Total	33	2	35	\$ 75,913	\$ 2,225	\$ 78,138

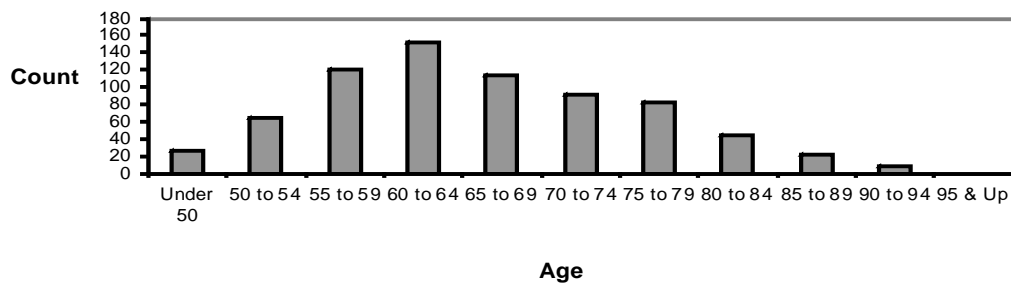
**Age Distribution**



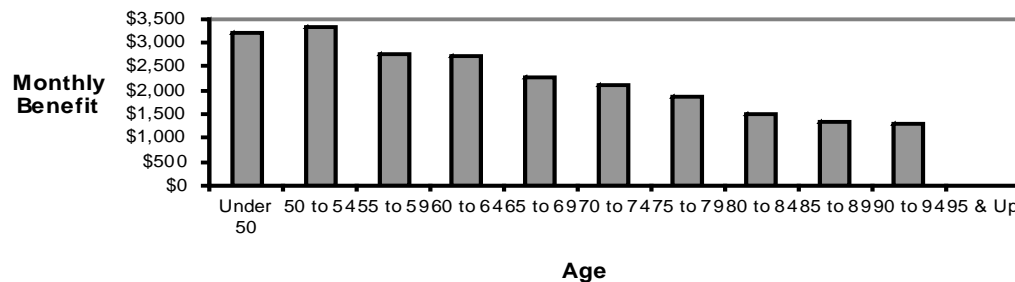
**Summary of Retired Members  
as of December 31, 2011**

Age	Number			Monthly Benefit		
	Fire	Police	Total	Fire	Police	Total
Under 50	6	21	27	\$ 19,304	\$ 67,022	\$ 86,326
50 to 54	31	34	65	94,822	120,467	215,289
55 to 59	58	62	120	159,027	170,971	329,998
60 to 64	94	59	153	253,686	161,639	415,325
65 to 69	51	62	113	122,279	132,093	254,372
70 to 74	46	46	92	96,112	97,488	193,600
75 to 79	50	33	83	98,637	57,595	156,232
80 to 84	25	20	45	38,074	30,273	68,347
85 to 89	11	10	21	15,868	12,375	28,243
90 to 94	4	5	9	3,843	7,695	11,538
95 & Up	0	0	0	0	0	0
Total	376	352	728	\$ 901,652	\$ 857,618	\$ 1,759,270

**Age Distribution**



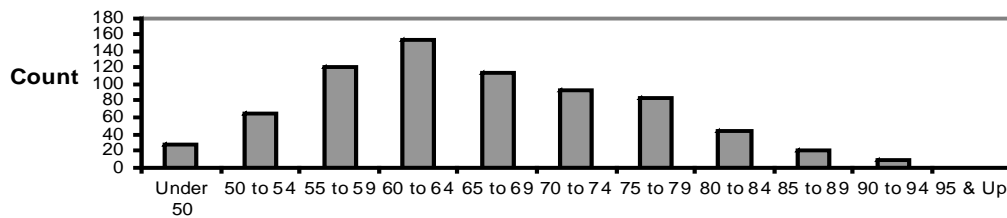
**Average Benefit**



**Summary of Retired Members  
as of December 31, 2011**

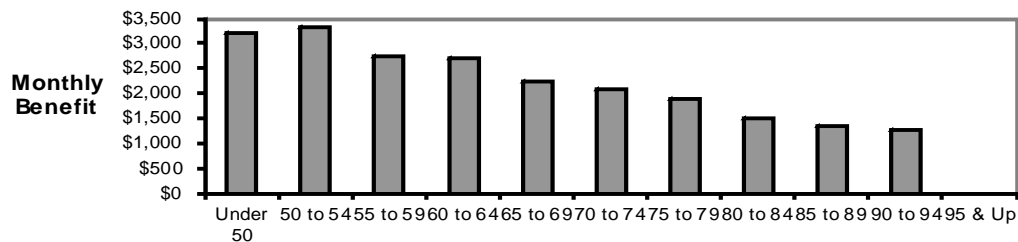
Age	Number			Monthly Benefit		
	Male	Female	Total	Male	Female	Total
Under 50	21	6	27	\$ 66,865	\$ 19,461	\$ 86,326
50 to 54	62	3	65	207,981	7,308	215,289
55 to 59	119	1	120	327,299	2,699	329,998
60 to 64	152	1	153	413,299	2,026	415,325
65 to 69	110	3	113	248,789	5,583	254,372
70 to 74	89	3	92	188,652	4,948	193,600
75 to 79	82	1	83	154,726	1,506	156,232
80 to 84	44	1	45	66,329	2,018	68,347
85 to 89	21	0	21	28,243	0	28,243
90 to 94	8	1	9	10,692	846	11,538
95 & Up	0	0	0	0	0	0
Total	708	20	728	\$ 1,712,875	\$ 46,395	\$ 1,759,270

**Age Distribution**



**Age**

**Average Benefit**



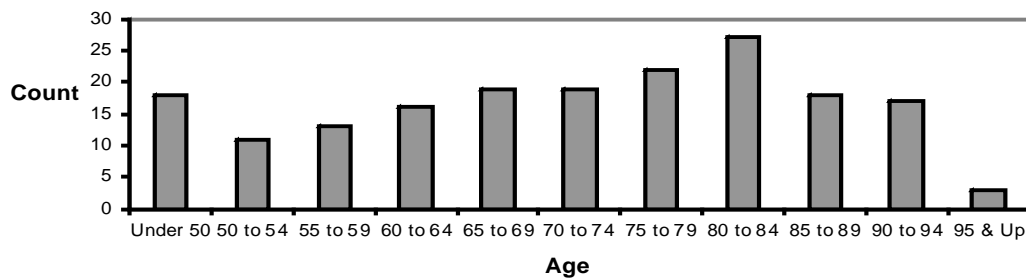
**Age**



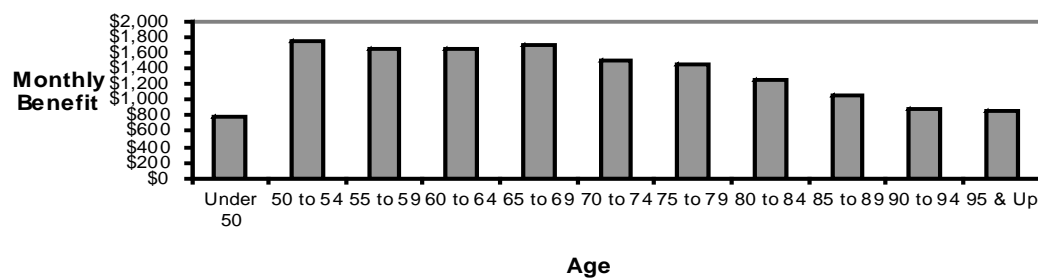
**Summary of Beneficiaries  
as of December 31, 2011**

Age	Number			Monthly Benefit		
	Fire	Police	Total	Fire	Police	Total
Under 50	9	9	18	\$ 9,941	\$ 4,077	\$ 14,018
50 to 54	5	6	11	12,281	6,841	19,122
55 to 59	7	6	13	11,460	9,896	21,356
60 to 64	10	6	16	17,472	9,009	26,481
65 to 69	6	13	19	9,232	22,742	31,974
70 to 74	8	11	19	12,280	16,317	28,597
75 to 79	15	7	22	23,199	8,406	31,605
80 to 84	13	14	27	14,722	18,720	33,442
85 to 89	12	6	18	13,162	5,933	19,095
90 to 94	11	6	17	9,181	5,842	15,023
95 & Up	0	3	3	0	2,568	2,568
Total	96	87	183	\$ 132,930	\$ 110,351	\$ 243,281

**Age Distribution**



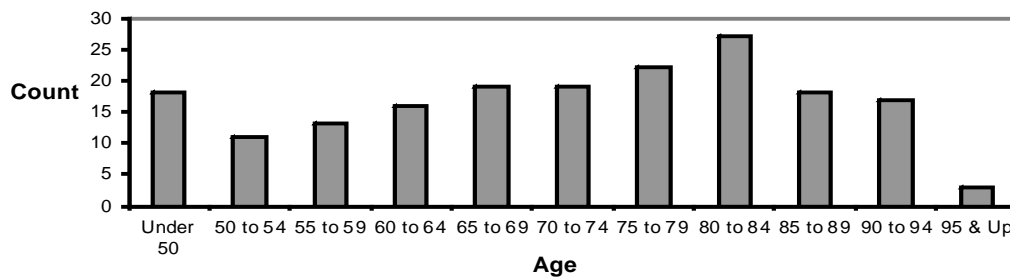
**Average Benefit**



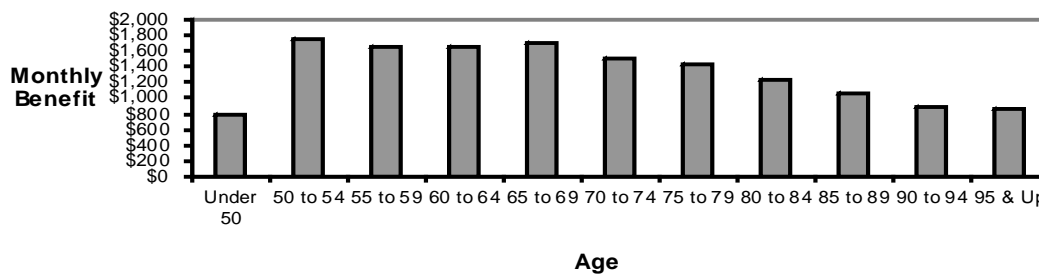
**Summary of Beneficiaries  
as of December 31, 2011**

Age	Number			Monthly Benefit		
	Male	Female	Total	Male	Female	Total
Under 50	9	9	18	\$ 3,513	\$ 10,505	\$ 14,018
50 to 54	0	11	11	0	19,122	19,122
55 to 59	0	13	13	0	21,356	21,356
60 to 64	0	16	16	0	26,481	26,481
65 to 69	1	18	19	2,194	29,780	31,974
70 to 74	0	19	19	0	28,597	28,597
75 to 79	0	22	22	0	31,605	31,605
80 to 84	0	27	27	0	33,442	33,442
85 to 89	0	18	18	0	19,095	19,095
90 to 94	0	17	17	0	15,023	15,023
95 & Up	0	3	3	0	2,568	2,568
Total	10	173	183	\$ 5,707	\$ 237,574	\$ 243,281

**Age Distribution**



**Average Benefit**



## Appendix B

### Summary of Benefit Provisions

**Plan A** is applicable to members who entered the System between January 1, 1965 and December 31, 1978 and members who entered prior to January 1, 1965 and elected Plan A coverage.

**Plan B** is applicable to members who entered the System prior to January 1, 1965 and elected Plan B coverage.

**Plan C** is applicable to members entering the System after December 31, 1978.

#### **Service Retirement**

**Eligibility – Plan A and Plan B:** 20 years of service, without regard to age.

**Eligibility – Plan C:** 30 years of service, without regard to age; or 20 years of service and attainment of age 50 years; or, if 10 or more years of service but less than 20, age 55.

**Amount of Pension – all plans:** Service times 2.5% of Final Average Salary to a maximum of 75% of Final Average Salary.

**Final Average Salary – all plans:** average for the 3 consecutive years of service which produce the highest average and which are within the last 10 years of service.

#### **Deferred Retirement (Vested Termination)**

**Eligibility – all plans:** 10 years of service (does not include survivor benefits if service is less than 20 years).

**Amount of Pension – all plans:** 2.5% of Final Average Salary times years of service with payment deferred until age 55 (age 50 for Plan C members with 20 or more years of service). Vested deferred pensions for Plan C are adjusted during the deferral period based on changes in National Average Earnings, up to 5.5% annual adjustments (effective for post-1999 terminations).

#### **Service-Connected Disability**

**Eligibility – all plans:** permanent inability to perform the duties of position; no service retirement.

**Amount of Pension – all plans:** 75% of final salary rate if accident, 50% if disease.

**Miscellaneous Conditions – all plans:** pension plus earnings from gainful employment cannot exceed current salary for rank held at time of disability. Pension recomputed at age 55 using service retirement formula, updated final average salary and service credit for period of disability.

### **Non-Service Disability**

**Eligibility – all plans:** permanent inability to perform duties of position; requires 7 years of service and under age 55 years old.

**Amount of Pension – all plans:** 30% of Final Average Salary plus 1% of Final Average Salary times service over 7 years; maximum is 50% of Final Average Salary.

**Miscellaneous Conditions – all plans:** pension plus earnings from gainful employment cannot exceed current salary for rank held at time of disability.

### **Service-Connected Death**

**Eligibility – all plans:** death resulting directly from service-connected causes; no service requirement.

**Amount of Pension – all plans:** surviving spouse – 50% of final salary plus 10% of final salary for each child under age 18 years to a maximum of 75% of final salary; terminates upon remarriage prior to age 40 years for pensions effective prior to January 1, 2000.

Children (no surviving spouse's pension payable) – 20% of final salary for each child under age 18 to a maximum of 60% of final salary.

### **Non-Service Death**

**Eligibility – Plan A and Plan C:** death after 3 years of service.

**Eligibility – Plan B:** death after 20 years of service.

**Amount of Pension – Plan A and Plan C:** surviving spouse – 35% of Final Average Salary plus 1% of Final Average Salary times Service over 3 years to a maximum of 50% of Final Average Salary, plus 10% of Final Average Salary for each child under age 18 to an overall maximum of 66⅔% of Final Average Salary. Terminates upon remarriage prior to age 40 years for pensions effective prior to January 1, 2000.

Children (no surviving spouse's pension payable) – 15% of Final Average Salary for each child under age 18 years to a maximum of 50% of Final Average Salary.

**Amount of Pension – Plan B:** surviving spouse – 50% of final salary.

Children (no surviving spouse's pension payable) – children under age 18 share equally a benefit of 50% of final salary.

### **Death After Retirement**

**Eligibility – all plans:** surviving spouse must have been married to retired employee for one year or more at time of death, if retired after January 1, 2000. If retired prior to January 1, 2000, must have been married to retired employee at retirement. Member must have retired with at least 20 years of service.

**Amount of Pension – Plan A and Plan C:** surviving spouse – 35% of Final Average Salary plus 1% of Final Average Salary times Service over 3 years to a maximum of 50% of Final Average Salary, plus 10% of Final Average Salary for each child under age 18 to an overall maximum of 66⅔% of Final Average Salary. Post-retirement adjustments are granted from date of retirement to date of death. Terminates upon remarriage prior to age 40 years for those retiring prior to January 1, 2000.

Children (no surviving spouse's pension payable) – 15% of Final Average Salary for each child under age 18 years to a maximum of 50% of Final Average Salary.

**Amount of Pension – Plan B:** surviving spouse – 50% of final salary.

Children (no surviving spouse's pension payable) – children under age 18 share equally a benefit of 50% of final salary.

### **Non-Vested Termination**

**Eligibility – all plans:** termination of employment and no pension is or will become payable.

**Amount of Benefit – all plans:** refund of member's contributions plus 5% annual interest.

### **Funeral Benefit**

**Eligibility – Plan A and Plan C:** death of member who retired after November 21, 1973.

**Amount of Benefit – Plan A and Plan C:** \$750.

**Eligibility – Plan B:** death of retired member.

**Amount of Benefit – Plan B:** \$100 if member retired on or prior to November 21, 1973; \$750 if member retired after November 21, 1973.

### **Post-Retirement Adjustments of Pensions**

**Eligibility – all Plans:** Completion of 36 months of retirement.

**Annual Amount – all Plans:** 2% of the base amount of benefit (increases are not compounded).

### **BackDROP (Deferred Retirement Option Plan)**

**Eligibility:** Member must be eligible to retire under service retirement provisions at the effective date of the BackDROP.

**Amount:** Under the BackDROP, the member may elect a benefit based on a retirement date up to 60 months prior to the current date. The monthly benefit is computed based on Service, Final Average Salary and benefit formula at the selected prior date. The DROP account available to the retiring member is the computed benefit multiplied by the number of months of BackDROP plus applicable post-retirement adjustments and 5% annual interest, compounded monthly. Members are eligible to elect a sixty month BackDROP beginning January 1, 2003.

### **Employee Contributions**

Plan A: 8% of salary.

Plan B: 6% of salary.

Plan C: 7% of salary.

These member contribution rates include the 1% decrease effective in 1998 in recognition of the full funding of actuarial liabilities.

### **City Contributions**

Actuarially determined amounts sufficient to satisfy K.S.A. 1977 Suppl. 12-5002.

### **Unused Sick Leave**

Each bi-weekly service credit of accumulated unused sick leave is converted to a service credit for the purpose of computing annual benefit amounts.

## Appendix C

### Actuarial Cost Method and Assumptions

#### Actuarial Cost Method

The actuarial cost method is a procedure for allocating the actuarial present value of pension benefits and expenses to time periods. The method used for the valuation is known as the Entry Age Normal actuarial cost method, and has the following characteristics.

- (i) The annual normal costs for each individual active member are sufficient to accumulate the value of the member's pension at time of retirement.
- (ii) Each annual normal cost is a constant percentage of the member's year-by-year projected covered compensation.
- (iii) Normal costs for Plans A and B (closed plans) were based on Plan C (open plan) assumptions and benefit conditions.

The Entry Age Normal actuarial cost method allocates the actuarial present value of each member's projected benefits on a level basis over the member's assumed pensionable compensation rates between the entry age of the member and the assumed exit ages. By applying the Entry Age Normal cost method in the fashion described in (iii), the ultimate normal cost will remain level as a percent of active member payroll (if actuarial assumptions are realized) as Plan A and Plan B members leave active status and are replaced by members entering Plan C.

The portion of the actuarial present value allocated to the valuation year is called the normal cost. The portion of the actuarial present value not provided for by the actuarial present value of future normal costs is called actuarial liability. Deducting actuarial assets from the actuarial liability determines the unfunded actuarial liability or (surplus). The unfunded actuarial liability/(surplus) is financed as a level percent of member payroll over an open 20-year period.

#### Actuarial Assumptions

Retirement System contribution requirements and actuarial present values are calculated by applying experience assumptions to the benefit provisions and membership information of the Retirement System, using the actuarial cost method.

The principal areas of risk which require experience assumptions about future activities of the Retirement System are:

- (i) long-term rates of investment return to be generated by the assets of the System
- (ii) patterns of pay increases to members
- (iii) rates of mortality among members, retirants and beneficiaries
- (iv) rates of withdrawal of active members
- (v) rates of disability among active members
- (vi) the age patterns of actual retirements.

In making a valuation, the monetary effect of each assumption is calculated for as long as a present covered person survives - a period of time which can be as long as a century.

Actual experience of the Retirement System will not coincide exactly with assumed experience. Each valuation provides a complete recalculation of assumed future experience and takes into account all past differences between assumed and actual experiences. The result is a continual series of adjustments (usually small) to the computed contribution rate.

From time-to-time one or more of the assumptions are modified to reflect experience trends (but not random or temporary year-to-year fluctuations). A complete review of the actuarial assumptions was completed in 2009. The use of updated assumptions was effective with the December 31, 2009 valuation.

**Investment Return Rate** (net of administrative expenses). This assumption is 7.75% a year, compounded annually and consists of 3.50% long-term price inflation and a 4.25% real rate of return over price inflation. This assumption, used to equate the value of payments due at different points in time, was adopted by the Board and was first used for the December 31, 1980 valuation, although the allocation between inflation and real return has changed periodically, most recently in 2009.

**Salary Increase Rates.** These rates are used to project current pay amounts to those upon which a benefit will be based.

Years of Service	Annual Rate of Salary Increase for Sample Service Durations			
	Inflation Component	Productivity Component	Merit and Longevity	Total
1	3.50%	0.50%	2.75%	6.75%
5	3.50	0.50	2.75	6.75
10	3.50	0.50	2.75	6.75
15	3.50	0.50	2.75	6.75
20	3.50	0.50	1.00	5.00
25	3.50	0.50	1.00	5.00
30	3.50	0.50	1.00	5.00

The assumption was first used for the December 31, 2009 valuation.

The salary increase assumptions will produce 4.0% annual increases in active member payroll (the inflation and productivity base rate) given a constant active member group size. This is the same payroll growth assumption used to amortize the unfunded actuarial liability. The real rate of return over assumed wage growth is 3.75% per year.

Changes actually experienced in average pay and total payroll have been as follows:

	Year Ended					5 Year (Average) Compounded Annual Increase
	12/31/11	12/30/10	12/31/09	12/31/08	12/31/07	
Average pay	0.2%	0.7%	3.2%	6.4%	5.6%	3.2%
Total payroll	0.1%	-0.3%	5.5%	4.8%	6.7%	3.3%



**Mortality Table.** This assumption is used to measure the probabilities of members dying before retirement and the probabilities of each pension payment being made after retirement.

Healthy Retirees

and Beneficiaries: RP-2000 Healthy Annuitant Table for Males and Females

Disabled Retirees: RP-2000 Disabled Table for Males and Females

Active Members: RP-2000 Employee Table for Males and Females

The RP-2000 Tables are used with generational mortality except Disabled Retirees (no projection).

Sample Ages <sup>(1)</sup>	Present Value of \$1 Monthly for Life		Future Life Expectancy (Years)	
	Men	Women	Men	Women
50	\$138.63	\$141.98	32.3	34.6
55	132.05	135.41	27.6	29.7
60	122.80	127.04	23.0	25.1
65	111.13	116.91	18.5	20.7
70	97.31	104.80	14.5	16.7
75	81.63	90.90	10.9	13.0
80	65.36	75.76	7.9	9.8
85	49.97	60.20	5.6	7.1

(1) Ages in 2000

This table was first used for the December 31, 2004 actuarial valuation.

**Rates of Retirement and BackDROP (Deferred Retirement Option Plan) Elections.** This assumption is used to measure the probability of eligible members retiring from active employment and applicable elections under the BackDROP program.

Percent Retiring within Year					
Plans A & B			Plan C		
Service of Member	Police	Fire	Age of Member	Police	Fire
28 or less	5%	5%	50	10%	5%
29	5	5	51	10	5
30	10	5	52	10	5
31	10	5	53	10	10
32	30	25	54	10	10
33	50	25	55	10	10
34	50	25	56	30	20
35	100	100	57	30	20
Over 35	100	100	58	30	20
			59	30	20
			60	100	100
			Over 60	100	100

These rates were first used for the December 31, 2009 valuation.

In addition, we assumed members who retire under service retirement provisions elect a Back DROP of up to five years which maximizes the actuarial value of the retirement benefit determined as of the retirement date. For the determination of actuarial value, the funding valuation assumptions are used.

**Rates of Separation from Active Membership.** This assumption measures the probabilities of a member terminating employment. The rates do not apply to members who are eligible to retire.

Sample Ages	Years of Service	Percent Separating Within Year	
		Police	Fire
ALL	0	10.00%	8.00%
	1	8.00	6.00
	2	6.00	4.50
	3	4.00	3.00
	4	3.00	2.00
25	Over 4	3.00	1.00
30		3.00	1.00
35		2.50	0.95
40		1.90	0.85
45		0.70	0.50
50		0.0	0.0
55		0.0	0.0

These rates were first used for the December 31, 2009 valuation.

**Forfeiture of Vested Benefits.** The assumption is that a percentage of the actuarial present value of vested termination benefits will be forfeited by a withdrawal of accumulated contributions.

Years of Service	Percent Forfeiting
10-14	100%
15	0

This table was first used for the December 31, 2004 actuarial valuation.

**Rates of Disability.** This assumption measures the probabilities of a member becoming disabled.

Sample Ages	% of Active Members Becoming Disabled During Next Year	
	Police	Fire
20	0.10%	0.09%
25	0.16	0.14
30	0.33	0.30
35	0.55	0.49
40	0.77	0.68
45	0.98	0.87
50	1.20	1.06
55	1.42	1.14

These rates were first used for the December 31, 1999 valuation.

**Rates of Recovery from Disability.** Assumed to be zero.

**Administrative Expenses.** Assumed to be paid from investment earnings.

**Active Member Group Size.** Assumed to remain constant.

**Vested Deferred Pensions.** Amounts for Plan C are assumed to increase during the deferral period at 4.0% per year. This assumption was changed with the December 31, 2009 valuation.

### Miscellaneous and Technical Assumptions

**Marriage Assumption:** 80% of non retired participants are assumed to be married for purposes of death benefits. In each case, the male was assumed to be 3 years older than the female.

**Service Related Death and Disability:** All active member deaths and 75% of active member disablements are assumed to be service related.

**Pay Increase Timing:** Assumed to occur mid-year.

**Decrement Timing:** Decrements of all types are assumed to occur mid-year.

**Eligibility Testing:** Eligibility for benefits is determined based upon the age nearest birthday and service nearest whole year at the start of the year in which the decrement is assumed to occur.

**Benefit Service:** Service calculated to the nearest month, as of the decrement date, is used to determine the amount of benefit payable.

**Other:** The turnover decrement does not operate during retirement eligibility.

**Miscellaneous Loading Factors:** The calculated normal retirement benefits were increased by 4% to account for the inclusion of unused sick leave in the calculation of Service Credit. This assumption was changed with the December 31, 2004 valuation.

## Appendix D

### Glossary of Terms

<b>Actuarial Liability</b>	The difference between the actuarial present value of system benefits and the actuarial value of future normal costs. Also referred to as “accrued liability” or “actuarial liability”.
<b>Actuarial Assumptions</b>	Estimates of future experience with respect to rates of mortality, disability, turnover, retirement, rate or rates of investment income and salary increases. Decrement assumptions (rates of mortality, disability, turnover and retirement) are generally based on past experience, often modified for projected changes in conditions. Economic assumptions (salary increases and investment income) consist of an underlying rate in an inflation-free environment plus a provision for a long-term average rate of inflation.
<b>Accrued Service</b>	Service credited under the system which was rendered before the date of the actuarial valuation.
<b>Actuarial Equivalent</b>	A single amount or series of amounts of equal actuarial value to another single amount or series of amounts, computed on the basis of appropriate assumptions.
<b>Actuarial Cost Method</b>	A mathematical budgeting procedure for allocating the dollar amount of the actuarial present value of retirement system benefit between future normal cost and actuarial liability. Sometimes referred to as the “actuarial funding method.”
<b>Experience Gain (Loss)</b>	The difference between actual experience and actuarial assumptions anticipated experience during the period between two actuarial valuation dates.
<b>Actuarial Present Value</b>	The amount of funds currently required to provide a payment or series of payments in the future. It is determined by discounting future payments at predetermined rates of interest and by probabilities of payment.
<b>Amortization</b>	Paying off an interest-discounted amount with periodic payments of interest and principal, as opposed to paying off with lump sum payment.
<b>Normal Cost</b>	The actuarial present value of retirement system benefits allocated to the current year by the actuarial cost method.
<b>Unfunded Actuarial Liability</b>	<p>The difference between actuarial liability and the valuation assets.</p> <p>Most retirement systems have unfunded actuarial liability. They arise each time new benefits are added and each time an actuarial loss is realized.</p> <p>The existence of unfunded actuarial liability is not in itself bad, any more than a mortgage on a house is bad. Unfunded actuarial liability does not represent a debt that is payable today. What is important is the ability to amortize the unfunded actuarial liability and the trend in its amount.</p>

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**CITY OF WICHITA  
CITY COUNCIL MEETING  
April 17, 2012**

**TO:** Mayor and City Council

**SUBJECT:** REAP Consortium Agreement for South Central Kansas Sustainable Communities (All Districts)

**INITIATED BY:** Metropolitan Area Planning Department

**AGENDA:** New Business

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**Recommendation:** Approve the Consortium Agreement, authorize the necessary signatures, and authorize the Mayor to designate a Primary Point of Contact.

**Background:** In November 2011, the U.S. Department of Housing and Urban Development (HUD) awarded the Regional Economic Area Partnership (REAP) a Sustainable Communities Regional Planning Grant in the amount of \$1.5 million. The purpose of this grant is to develop a regional plan for sustainable communities for south central Kansas. This plan must reflect the following six HUD livability principles: 1) provide more transportation choices; 2) promote equitable/affordable housing; 3) enhance economic competitiveness; 4) support existing communities; 5) coordinate and leverage federal policies and investment; and, 6) value communities and neighborhoods.

In order to qualify for this grant, REAP created a regional consortium that includes the City of Wichita (the city with the largest population), the Wichita Area Metropolitan Planning Organization (the region's MPO), and all counties and their respective county seats in the Metropolitan Statistical Area (Sedgwick, Butler, Harvey and Sumner) plus Reno County. Other private and non-profit entities have also agreed to be members of this consortium. On September 20, 2011, the City Council adopted a resolution authorizing the City of Wichita to participate in the REAP consortium.

**Analysis:** The total budget for the three-year regional plan development process is \$2,322,804. The proposed cost share is approximately 65 percent grant funds (\$1,500,000) from HUD and approximately 35 percent leveraged local resources from the consortium members. All local resources are in-kind (non-cash) contributions with the exception of a \$50,000 cash match from the Kansas Health Foundation. Funds will be used for project management staff, technical consultation and assistance, and activities to engage underrepresented populations. REAP will oversee the grant award and the development of the plan through the hiring of a project manager and an assistant project manager. Sedgwick County has agreed to serve as fiscal agent for the grant program. REAP will have three years to complete the regional plan.

The Consortium Agreement commits the City of Wichita to be a member of the regional consortium and to support this effort with staff services which will be used as part of the in-kind match for the federal grant. Staff in-kind support services will come from the Metropolitan Area Planning Department, the Urban Development Department, the Public Works & Water Utilities Department, and the Housing and Community Development Department. The Wichita Area Metropolitan Planning Organization (WAMPO) will also participate as the required MPO.

**Financial Considerations:** There is no cash match requirement from the City and no City staff will be added to work on this project. The annual leveraged in-kind match proposed will not exceed \$55,470 and for the three year planning process, will not exceed \$166,410. This is equivalent to approximately 0.43 FTE annually (see table).

<b>City of Wichita In-Kind Contributions in Support of the REAP HUD Grant</b>			
<i><b>Position</b></i>	<i><b>FTE/YR</b></i>	<i><b>Annual Contribution</b></i>	<i><b>Three-year Contribution</b></i>
Director of Urban Development	.04	\$5,670	\$17,010
Assistant Public Works Director	.04	\$5,578	\$16,734
Division Manager - Building Services	.04	\$5,210	\$15,630
Fleet Manager	.04	\$4,850	\$14,550
City Engineer	.04	\$6,720	\$20,160
Stormwater Manager	.04	\$4,496	\$13,488
Director of Planning	.05	\$7,591	\$22,773
Advanced Plans Manager	.05	\$5,402	\$16,206
Downtown Revitalization Manager	.05	\$4,352	\$13,056
Housing & Community Services Manager	.02	\$3,262	\$9,786
Home-ownership Manager	.02	\$2,339	\$7,017
<b>TOTALS</b>	0.43	\$55,470	\$166,410

**Goal Impact:** Participation in REAP's regional consortium supports the City's goals of Economic Vitality and Affordable Living, Efficient Infrastructure, and Safe and Secure Communities.

**Legal Considerations:** The Law Department has approved the attached Agreement as to form.

**Recommendation:** It is recommended that the City Council approve the Consortium Agreement, authorize the necessary signatures, and authorize the Mayor to designate a Primary Point of Contact.

**Attachment:**

1. REAP Consortium for Sustainable Communities - Consortium Agreement.

## **REAP Consortium for Sustainable Communities Consortium Agreement**

The Regional Economic Area Partnership (REAP) Consortium for Sustainable Communities (the "Consortium") is a broadly-based coalition committed to implementing a Regional Plan for Sustainable Communities (RPSC) for South Central Kansas. The RPSC will provide an overall vision and commitment for sustainable growth and will provide goals, strategies, and action steps to support that vision. To implement the RPSC, the U.S. Department of Housing and Urban Development (HUD) has awarded REAP a three-year, \$1.5 million Sustainable Communities Regional Planning Grant (the "Grant").

### **1. Goals for the Consortium**

The Regional Economic Area Partnership (REAP), working with its partners through the Consortium Leadership Team, and five working teams will develop a toolbox of strategies and techniques to support existing communities, provide more transportation choices, promote equitable, affordable housing, coordinate infrastructure investments, and strengthen the regional economy.

Local jurisdictions in South-central Kansas must work cooperatively to be economically competitive in a world marketplace. The RPSC will include a coordinated plan to foster long-term job creation with adequate infrastructure to affordably access employment and services. The RPSC will develop nine activities as part of a framework to ensure our region's economic competitiveness.

1. **Governance:** Create a structure that is inclusive, responsible and accountable for carrying out the grant activities and monitoring program accomplishments.
2. **Community Engagement Plan:** Build capacity for under-represented populations and provide education and outreach on sustainable infrastructure investments for the region.
3. **Needs Assessment:** Research regional and local plans, statistics, and policies that will serve as a baseline of information for planning activities.
4. **Vision for Healthy Community Design:** Use the information from the needs assessment to facilitate engagement opportunities and develop a healthy community design framework to serve as a guideline for developing the South-central plan for sustainable communities.
5. **Regional Water Plan:** Provide an understanding of the capability of meeting future water quantity and quality demands affordably through a framework for cooperation that integrates efficient delivery of potable water throughout the region.

6. **Regional Transportation Plan:** Develop multi-modal transportation options/programs for the region and connects housing options to emerging employment clusters.
7. **Regional Housing Plan** Support robust housing options that address affordability, freedom from discrimination, access to economic opportunities, and integration with transportation options, healthy community design, and energy efficiency.
8. **Regional Identity for Workforce and Business Development:** Create a regional brand that will support existing communities, businesses, and workforce development opportunities as well as identify and support emerging business and industry clusters.
9. **Integration:** Measure the success of the Regional Plan for Sustainable Communities by developing indicators or measurements that show the region is progressing toward a sustainable future.

## 2. **Roles and Responsibilities of Consortium Members**

Consortium members are listed in Appendix A, which is incorporated herein by reference. REAP is the managing entity of the Consortium and has final decision making authority. Project management staff of the Consortium will be employed by Wichita State University in contract with REAP. Sedgwick County is the fiscal agent of the Consortium and all budgetary, accounting, procurement, reporting and auditing matters of the Consortium will follow the established protocol of Sedgwick County. Consortium members will designate a primary point of contact that has final decision making authority on behalf of the member regarding Consortium business. Consortium members agree to abide by the governance structure and decision making protocols of the Consortium. Consortium members will provide representatives to the Consortium Leadership Team (CLT) and work teams, as necessary. Consortium members will provide timely responses to requests for information from REAP, the CLT, and work teams. Consortium members will participate in the community engagement process by helping to publicize community engagement activities in their community and providing access to facilities under their control, to the extent practical. Consortium members will provide the leveraged resources outlined in Appendix A.

## 3. **Accountability Mechanisms**

Consortium members are responsible for ensuring that their representatives on the CLT and work teams attend meetings on a regular basis and actively participate in the process of implementing the RPSD. If representatives are not regularly attending meetings or actively participating, Consortium members will first have a dialogue with the representative to encourage participation and then nominate a replacement representative in instances where non-participation continues. Consortium members are responsible for documenting the



leveraged resources outlined in Appendix A and providing information necessary to comply with Grant reporting and auditing requirements consistent with established protocol of Sedgwick County and in the manner as may be established from time to time by REAP.

**4. Governance Structure and Decision Making Protocols**

The governance structure and decision making protocols of the Consortium are outlined in detail in Appendix B, which is incorporated herein by reference, and are summarized in this paragraph. The REAP governing body is the managing entity of the Consortium and has final decision making authority. REAP will appoint the membership of the Consortium Leadership Team (CLT) to oversee the implementation of the RSPC. The CLT will report on its activities and the activities of its work teams to the REAP governing body and REAP Committees. The CLT may make recommendations to the REAP governing body regarding final decisions on key Consortium business.

Members of the CLT may serve as leaders of five different work teams that will focus on business development, built environment, work force development, transportation, and natural resources. Membership of the work teams will be ratified by the CLT. The work teams will operate under the guidance and direction of the CLT and will report on their activities to the CLT.

**5. Membership Benefits**

Consortium members will have the benefit of "Preferred Sustainability Status" as it applies to applications for federal grants. Consortium members will have access to all tools, models, and best practices developed by the Consortium through the implementation of the RPSD. Consortium members will have access to all learning and networking opportunities involved with the implementation of the RPSD.

**6. Expansion of Consortium Membership**

Any entity may petition to join the Consortium. REAP, Consortium members, the CLT, or work teams may nominate any entity for Consortium membership. Consortium membership requires approval of the REAP governing body and execution of the Consortium Agreement by the new member.

**7. Duration of Consortium Agreement**

This Consortium Agreement will remain in force for the duration of the Grant, which is expected to conclude on February 15, 2015.

EXECUTED AS OF \_\_\_\_\_, 2012

\_\_\_\_\_  
Carl Brewer – Mayor  
City of Wichita

Primary Point of contact:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone

\_\_\_\_\_  
E-Mail

\_\_\_\_\_  
Street

\_\_\_\_\_  
City, State, ZIP Code

Attest:

Approved as to Form:

\_\_\_\_\_  
Karen Sublett, City Clerk

\_\_\_\_\_  
Gary E. Rebenstorf, City Attorney

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Signature

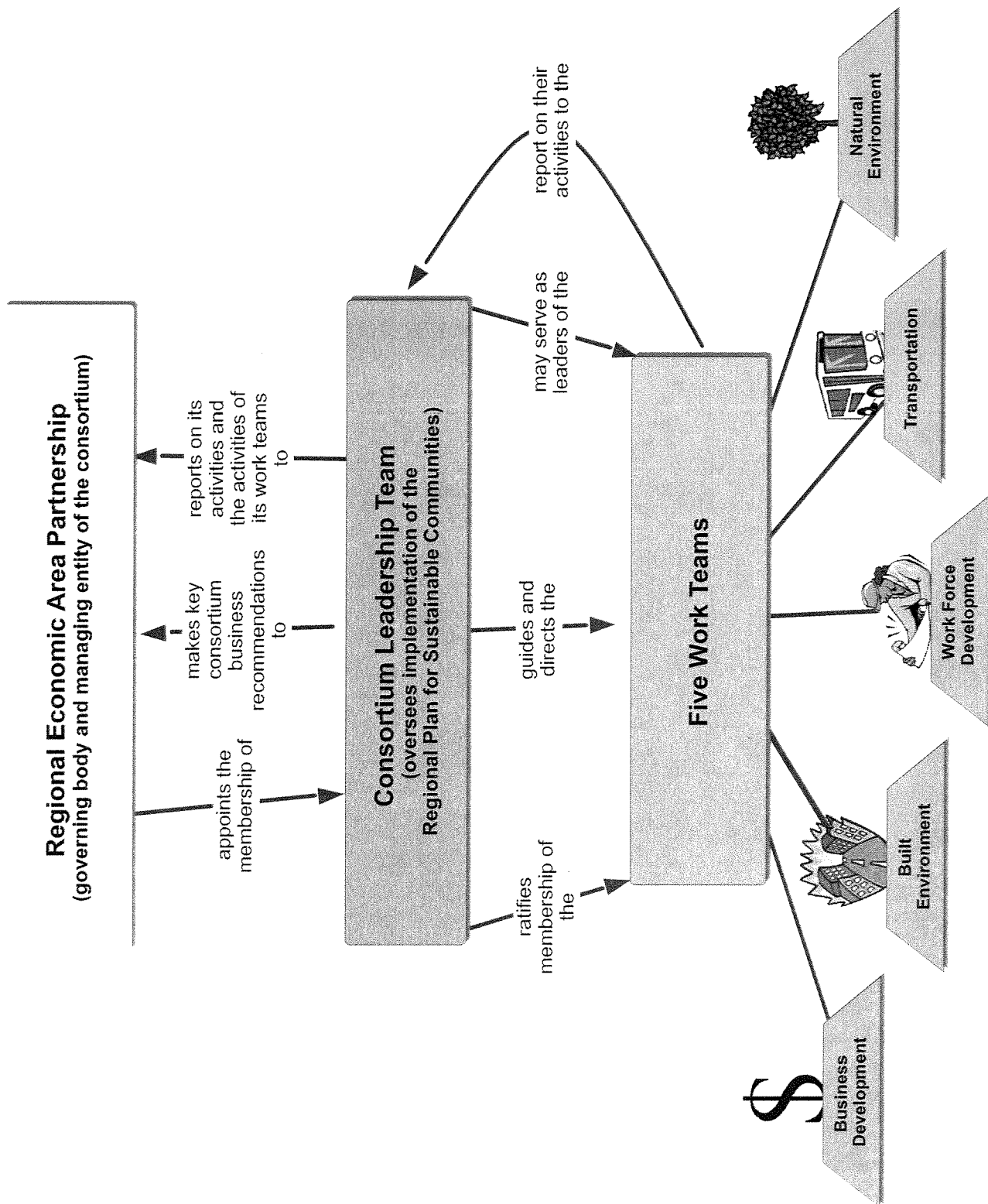
Joseph Yager, Chief Executive Officer, Regional Economic Area Partnership

## Appendix A

Consortium Member	Leveraged Resources Amount	Type	Source
Hugo Wall School (CUS, REAP, EFC)	\$125,723	In-kind	State government
City of Wichita	\$156,624	In-kind	Local government
City of Wichita (HCSD)	\$9,786	In-kind	Other HUD Funds
Sedgwick County	\$120,707	In-kind	Local government
Kansas Health Foundation	\$50,000	Cash	Non-Profit
Visioneering Wichita	\$45,000	In-kind	Private sector
City of Newton	\$44,055	In-kind	Local government
Ponder: Connect Marketing	\$30,240	In-kind	Private Sector
United Way	\$30,000	In-kind	Non-profit
City of Hutchinson	\$25,244	In-kind	Local government
Harvey County	\$20,060	In-kind	Local government
Wichita State University (CCSR)	\$18,720	In-kind	State government
Reno County	\$16,105	In-kind	Local government
Independent Living Resource Center	\$14,400	In-kind	Non-profit
Butler County	\$13,138	In-kind	Local government
Workforce Alliance of South Central Kansas	\$10,125	In-kind	Non-profit
Wichita Downtown Development Corp.	\$9,072	In-kind	Non-profit
Sumner County	\$6,974	In-kind	Local government
Kansas Small Business Development Center	\$6,300	In-kind	State government
City of El Dorado	\$4,700	In-kind	Local government
University of Kansas School of Medicine-Wichita	\$4,500	In-kind	State government
City of Wellington	\$2,770	In-kind	Local government
Wichita Independent Neighborhoods, Inc.	<u>\$2,100</u>	In-kind	Non-profit
Total Leveraged Resources	<u>\$823,405</u>		

## Appendix B

### Regional Plan for Sustainable Communities Governance Structure and Decision Making Protocols



**City of Wichita  
City Council Meeting  
April 17, 2012**

**TO:** Mayor and City Council

**SUBJECT:** Design Supplemental Agreement No. 3– East Kellogg, Cypress to 127<sup>th</sup> Street East (Project I) (District II)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** New Business

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**Recommendation:** Approve Supplemental Agreement No. 3.

**Background:** Kellogg Avenue (US 54/400) is a vital east-west route through Wichita and Sedgwick County. Expansion of the Kellogg Avenue (US 54/400) corridor from a four lane expressway to the six lane freeway, known as the Kellogg Flyover, began in 1990 just west of Wichita's Central Business District. Successive projects have extended the freeway section both east and west for a total 13 miles from 111<sup>th</sup> Street on the west side to 1/2 mile east of Rock Road on the east side. On December 4, 2007, the City Council approved hiring a consortium of engineers, artists, and landscape architects led by Parsons Brinckerhoff (PB) to design the project. Designs of the unimproved portions of the corridor are in various stages of completion. The current six lane improvement ends at east Wichita at Cypress just west of the Kansas Turnpike (KTA).

A free-flow freeway concept design was approved for the Webb and Greenwich area by the City Council on August 3rd, 2010. The City of Wichita's Design Council recommended approval of the final aesthetic design on November 17, 2010, and the aesthetic design concept was approved on February 1, 2011, by the City Council. Since that time, the consultant has begun integrating and detailing those concepts under the direction of City staff and in consultation with the other project partners.

**Analysis:** Designing two interchanges at Webb and the KTA, in close proximity, is a highly unusual and challenging task. Although a concept acceptable to all of the project partners has been achieved, the first time nature of the work resulted in many unknowns being discovered during the process of designing the project. The amount of effort required to complete the design is also highly dependent upon the needs of the project partners discovered during the earlier stages of the design.

The design of this facility includes a number of components including; efficient mobility for people and commerce, consideration of previous, current, and future development, and quality of life. As the design has progressed the need for additional services has emerged.

The original agreement for professional services, dated December 4, 2007, provided a mechanism to pay for actual work performed because the scope of services was to be redefined as the design was refined based on the needs of the project partners. Supplemental No. 1 provided for additional services, to refine the design beyond the original agreement. Supplemental No. 2 continued that effort.

Supplemental Agreement No. 3 with PB has been prepared to authorize the additional services required to modify plans to a Kansas Department of Transportation (KDOT) format and standards, support right of way acquisition, additional engineering to accommodate recent commercial development, integrate the aesthetic design, incorporate Intelligent Transportation System (ITS) features, and develop a Transportation Management Plan to manage the impact of traffic in the area during construction.

**Financial Considerations:** Previous projects in the Kellogg corridor were funded by the City of Wichita utilizing the City's share of the local sales tax. The design and construction documents were produced utilizing City of Wichita standards and processes. In 2011, this project was selected by KDOT through the T-Works process to receive \$150,000,000 of funding for construction. To receive this funding the project must be designed utilizing KDOT plan formats and use KDOT processes for construction. The additional costs to meet these requirements are included in this supplemental.

The original agreement for professional services, dated December 4, 2007, was for an estimated \$6,975,602 to be paid on an actual cost basis. Supplemental No. 1 for \$451,793 provided for additional services to refine the design beyond the original agreement. Supplemental No. 2 continued that effort with an additional \$826,512. Supplemental Agreement No. 3 with PB for \$1,006,910 has been prepared to authorize the additional services required to meet the KDOT requirements, support right of way acquisition, additional engineering to accommodate recent development, integrate the aesthetic design, incorporate ITS features, and improve traffic flow during construction. On December 15, 2009, the City Council authorized a budget for direct expenses of \$280,000. To support the additional design work described above the budget for direct expenses will be increased by \$230,000.

Funding is available within the East Kellogg Project budget, funded by the local sales tax.

**Goal Impact:** This project addresses the Efficient Infrastructure and Quality of Life goals by improving east-west traffic flow and safety in an aesthetically pleasing manner.

**Legal Considerations:** Supplemental Agreement No. 3 and amending ordinance have been approved as to form by the Law Department.

**Recommendation/Action:** It is recommended that the City Council approve Supplemental Agreement No. 3, increase the budget, place the ordinance on first reading and authorize the necessary signatures.

**Attachments:** Supplemental Agreement No. 3 and amending ordinance.

SUPPLEMENTAL AGREEMENT  
TO THE  
AGREEMENT FOR PROFESSIONAL SERVICES DATED March 7, 2012  
BETWEEN  
THE CITY OF WICHITA, KANSAS  
PARTY OF THE FIRST PART, HEREINAFTER CALLED THE  
"CITY"  
AND  
PARSONS BRINCKERHOFF, INC.  
PARTY OF THE SECOND PART, HEREINAFTER CALLED THE  
"ENGINEER"

WITNESSETH:

WHEREAS, there now exists a Contract (dated December 4, 2007) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with the construction of improvements to the **EAST KELLOGG IMPROVEMENTS (US-54) FROM CYPRESS TO 127<sup>TH</sup>**.

WHEREAS, Paragraph IV. B. of the above referenced Contract provides that additional work be performed and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the ENGINEER provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

A. PROJECT DESCRIPTION

The description of the improvements that the CITY intends to construct and thereafter called the "PROJECT" as stated on page 1 of the above referenced agreement is hereby amended to include the following:

**East Kellogg Improvements (US-54) from Cypress to 127<sup>th</sup> Street  
(Project No. 472 84615)**

**See Exhibit "A"**



B. PAYMENT PROVISIONS

The fee in Section IV. A. shall be amended to include the following:

Payment to the ENGINEER for the performance of the professional services as outlined in this supplemental agreement will increase the total contract by \$ 1,006,909.85.

C. COMPLETION

The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans (including final tracings), specifications and estimates to the CITY by See Exhibit "A"; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions of inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

D. PROVISIONS OF THE ORIGINAL CONTRACT

The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by this Supplemental Agreement, shall remain in force and effect.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this Supplemental Agreement as of this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

BY ACTION OF THE CITY COUNCIL

\_\_\_\_\_  
Carl Brewer, City Mayor

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Gary Rebenstorf, Director of Law

PARSONS BRINCKERHOFF, INC.

\_\_\_\_\_  
Raja Govindaswamy, PE, Vice President

ATTEST:

\_\_\_\_\_



Published in the Wichita Eagle on April 27, 2012

ORDINANCE NO. 49-263

AN ORDINANCE AMENDING ORDINANCE NO. **48-835** OF THE CITY OF WICHITA, KANSAS DECLARING **KELLOGG, BETWEEN CYPRESS AND 127TH STREET EAST (472-84615)** TO BE A MAIN TRAFFICWAY WITHIN THE CITY OF WICHITA KANSAS; DECLARING THE NECESSITY OF AND AUTHORIZING CERTAIN IMPROVEMENTS TO SAID MAIN TRAFFICWAY; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS, THE ESTIMATED COSTS THEREOF, AND THE MANNER OF PAYMENT OF THE SAME.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 1 of Ordinance No. **48-835** is hereby amended to read as follows :

“SECTION 1. SECTION 3 of Ordinance **47-706** is hereby amended to read as follows:

SECTION 3. The costs of the design of the above described improvements is estimated to be **Nine Million Seven Hundred Ninety Thousand Eight Hundred Twenty Dollars (\$9,790,820)** exclusive of the cost of interest on borrowed money, with the total cost paid by the City of Wichita. Said City cost, when ascertained, shall be borne by the City of Wichita at large by the issuance of General Obligation Bonds under the authority of K.S.A. 12-689.”

SECTION 2. The original of SECTION 1 of Ordinance No. **48-835** is hereby repealed.

SECTION 3. That the City Clerk shall make proper publication of this ordinance, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 24th day of April, 2012

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Carl Brewer, Mayor

ATTEST:

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Karen Sublett, City Clerk

(SEAL)

APPROVED AS TO FORM:

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Gary E. Rebenstorf  
Director of Law

City of Wichita  
City Council Meeting  
April 17, 2012

**TO:** Mayor and City Council Members

**SUBJECT:** An Ordinance Amendment pertaining to exemption of public property from the prohibition against alcohol consumption – outdoor city-owned property around the Intrust Bank Arena and the site of the Kansas African American Museum.

**INITIATED BY:** City Manager's Office

**AGENDA:** New Business

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**Recommendation:** Approve first reading of the ordinance.

**Background:** Kansas statutes and the Code of the City of Wichita prohibit the consumption of alcohol on public property. However, K.S.A. 41-719 provides that any city may exempt from this prohibition, by ordinance, any specified property, the title of which is vested in the city. There are open parking lots around the Intrust Bank Arena in which title is vested in the City, as is the property at 642 N. Seneca which has been leased to the Kansas African American Museum, Inc. Accordingly, in order to accommodate community events and other gatherings at which alcoholic liquor will be consumed, an ordinance amendment is necessary to exempt these properties from the prohibition against such alcohol consumption.

**Analysis:** Section 4.04.045 of the City Code lists public property that is exempt from the prohibition against consumption of alcohol thereon. The proposed ordinance amendment adds the now-vacant property at 642 N. Seneca as well as the city-owned open property within designated boundaries around the Intrust Bank Arena to this list. The boundaries proposed to encompass the properties within the Arena neighborhood expand upon certain outdoor areas around the WaterWalk area which have already been exempted.

The amendment further provides that the proposed exemption allowing alcohol consumption is valid only during times that a community event or temporary entertainment district has been approved by the City Council, or when the written consent of the city manager has been obtained, which will cover gatherings that do not fall under the definition of a community event. These limitations will prevent the open public consumption of alcohol that is not connected to an approved event.

**Financial Considerations:** None.

**Goal Impact:** Enhance the Quality of Life by allowing for a greater variety of events to occur upon the open public property in the proposed exempted areas.

**Legal Considerations:** The amendment has been prepared and approved as to form by the Law Department.

**Recommendation/ Actions:** It is recommended that the City Council approve first reading of the ordinance.

**Attachment:** Copy of the proposed new ordinance.

DELINEATED

4/10/12

AN ORDINANCE AMENDING SECTION 4.04.045 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO EXEMPTION OF CERTAIN PUBLIC PROPERTY WITHIN THE CITY FROM THE PROHIBITION AGAINST CONSUMPTION OF ALCOHOLIC LIQUOR THEREON BY VIRTUE OF THE AUTHORITY CONTAINED IN K.S.A. 41-719, AND REPEALING THE ORIGINAL OF SAID SECTION.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 4.04.045 of the Code of the City of Wichita, Kansas shall read as follows: “**Exemptions.** (a) The city, by virtue of the authority contained in K.S.A. 41-719 and amendments thereto, exempts the following properties from any prohibition against consumption of alcoholic liquor on public property contained in K.S.A. 41-719 and amendments thereto, and in Sections 4.04.040, 4.16.020 and 4.16.030 of this Code: CityArts, the education building of the Wichita Area treatment Education and Remediation (WATER) Center, Sports Hall of Fame, Lionel Alford Regional Library, Wichita-Sedgwick County Historical Museum, Century II, the Wichita Mid-Continent Airport, Colonel James Jabara Airport, Cowtown, the Wichita Art Museum, Mid-America All-Indian Center, Lawrence-Dumont Stadium, the Central Branch Wichita Public Library, the Kansas Aviation Museum (Historic Wichita Municipal Airport), Botanica -- the Wichita Gardens, the Hyatt Regency Wichita Hotel and Conference Center, Exploration Place, the Ice Sports Center of Wichita, the Wichita Boathouse, and the La Familia Senior Community Center, Inc. located at 841 W. 21st St. North.

(b) The city, by virtue of the authority contained in K.S.A. 41-719 and amendments thereto, exempts the following properties from any prohibition against consumption of alcoholic

liquor on public property contained in K.S.A. 41-719 and amendments thereto, and in Sections 4.04.060, 4.16.020 and 4.16.030 of this Code: the Old Town Farm and Art Market, Nomar International Market, the Old Town Cinema Plaza, the vacant property located at 642 N. Seneca as described in a lease approved by the Wichita City Council on June 19, 2007 between the City of Wichita and the Kansas African American Museum, Inc., and any open public property, that is owned by the City of Wichita and is located within the area bounded on the north by the south curb line of Douglas Avenue from the west curb line of ~~Main Street~~ Washington Avenue to the east bank of the Arkansas River, thence south to a line designated by the north edge of the Kellogg Flyover, thence east to the west curb line of ~~Main Street~~ Washington Avenue and thence north to the south curb line of Douglas Avenue to the point of origin. Provided, however, these properties referred to in this subsection shall be considered exempted only under the following circumstances:

- (1) when either a community event or temporary entertainment district has been approved by the City Council, or
- (2) when the written consent of the city manager or the manager's designee has been obtained if an activity does not require a community event permit, and
- (3) when a license for the sale of alcohol has been issued if such license is necessary."

SECTION 37. The original of Section 4.04.045 of the Code of the City of Wichita, Kansas, is hereby repealed.

SECTION 38. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon adoption and publication in the official city newspaper.

PASSED by the governing body of the City of Wichita, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Carl Brewer, Mayor

Attest:

\_\_\_\_\_  
Karen Sublett, City Clerk

Approved as to Form:

\_\_\_\_\_  
Gary E. Rebenstorf, Director of Law

ORDINANCE NO. 49-264

4/10/12

AN ORDINANCE AMENDING SECTION 4.04.045 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO EXEMPTION OF CERTAIN PUBLIC PROPERTY WITHIN THE CITY FROM THE PROHIBITION AGAINST CONSUMPTION OF ALCOHOLIC LIQUOR THEREON BY VIRTUE OF THE AUTHORITY CONTAINED IN K.S.A. 41-719, AND REPEALING THE ORIGINAL OF SAID SECTION.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA,  
KANSAS:

SECTION 1. Section 4.04.045 of the Code of the City of Wichita, Kansas shall read as follows: “**Exemptions.** (a) The city, by virtue of the authority contained in K.S.A. 41-719 and amendments thereto, exempts the following properties from any prohibition against consumption of alcoholic liquor on public property contained in K.S.A. 41-719 and amendments thereto, and in Sections 4.04.040, 4.16.020 and 4.16.030 of this Code: CityArts, the education building of the Wichita Area treatment Education and Remediation (WATER) Center, Sports Hall of Fame, Lionel Alford Regional Library, Wichita-Sedgwick County Historical Museum, Century II, the Wichita Mid-Continent Airport, Colonel James Jabara Airport, Cowtown, the Wichita Art Museum, Mid-America All-Indian Center, Lawrence-Dumont Stadium, the Central Branch Wichita Public Library, the Kansas Aviation Museum (Historic Wichita Municipal Airport), Botanica -- the Wichita Gardens, the Hyatt Regency Wichita Hotel and Conference Center, Exploration Place, the Ice Sports Center of Wichita, the Wichita Boathouse, and the La Familia Senior Community Center, Inc. located at 841 W. 21st St. North.



(b) The city, by virtue of the authority contained in K.S.A. 41-719 and amendments thereto, exempts the following properties from any prohibition against consumption of alcoholic liquor on public property contained in K.S.A. 41-719 and amendments thereto, and in Sections 4.04.060, 4.16.020 and 4.16.030 of this Code: the Old Town Farm and Art Market, Nomar International Market, the Old Town Cinema Plaza, the vacant property located at 642 N. Seneca as described in a lease approved by the Wichita City Council on June 19, 2007 between the City of Wichita and the Kansas African American Museum, Inc., and any open public property, that is owned by the City of Wichita and is located within the area bounded on the north by the south curb line of Douglas Avenue from the west curb line of Washington Avenue to the east bank of the Arkansas River, thence south to a line designated by the north edge of the Kellogg Flyover, thence east to the west curb line of Washington Avenue and thence north to the south curb line of Douglas Avenue to the point of origin. Provided, however, these properties referred to in this subsection shall be considered exempted only under the following circumstances:

(1) when either a community event or temporary entertainment district has been approved by the City Council, or

(2) when the written consent of the city manager or the manager's designee has been obtained if an activity does not require a community event permit, and

(3) when a license for the sale of alcohol has been issued if such license is necessary.”

SECTION 37. The original of Section 4.04.045 of the Code of the City of Wichita, Kansas, is hereby repealed.

SECTION 38. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon adoption and publication in the official city newspaper.

PASSED by the governing body of the City of Wichita, Kansas, this 24th day of April, 2012.

---

Carl Brewer, Mayor

Attest:

---

Karen Sublett, City Clerk

Approved as to Form:

---

Gary E. Rebenstorf, Director of Law

**Following are easements and dedications for City Council on April 17<sup>th</sup>, 2012**

The following deeds and easements have been recorded:

Utility Easement from State of Kansas dated February 28, 2012 for a tracts of land lying in the Northwest Quarter of Section 11, Township 27 south, Range 1 East of the 6<sup>th</sup> P.M. (OCA 607853) No Cost to City

Utility Easement from Wichita State University dated February 28, 2012 for a tracts of land lying in the Northwest Quarter of Section 11, Township 27 south, Range 1 East of the 6<sup>th</sup> P.M., Sedgwick County, Kansas (OCA 607853) No Cost to City

Utility Easement from Sugicare of Wichita, Inc. dated December 22, 2011 for a tract of land lying in Lots 4 and 5, Block 1, Greenwich Business Center Addition, an addition to Wichita, Sedgwick County, Kansas (OCA 607853) No Cost to City

Utility Easement from North Greenwich/29<sup>th</sup> LLC, a Kansas limited liability company dated December 8, 2011 for a tract of land lying in Lot 5, Block 1, Greenwich Business Center Addition, an addition to Wichita, Sedgwick County, Kansas (OCA 607853) No Cost to City

Utility Easement from North Greenwich/29<sup>th</sup> LLC, a Kansas limited liability company dated February 21, 2012 for a tract of land lying in Reserve C, Greenwich Business Center Addition, an addition to Wichita, Sedgwick County, Kansas (OCA 607853) No Cost to City

Utility Easement from Unified School District 259 dated February 13, 2012 for a tract of land lying in Lot 1, Block 1, Minneha Elementary School Addition, an addition to Wichita, Sedgwick County, Kansas (OCA 607853) No Cost to City

Drainage & Utility Easement from Schmidt Family Enterprises Corp dated January 30, 2012 for a tract of land lying in the Southeast Quarter of Section 21, Township 28 South, Range 1 East of the 6<sup>th</sup> P.M., Sedgwick County, Kansas, (OCA 607853) No Cost to City

Drainage & Utility Easement from Hampton Square, LLC, a Kansas limited liability company, dated August 15, 2011 for a tract of land lying in portions of Reserve "D" and Lots 4, 5, 6, and 7, Block 2, Hampton Square Second Addition, an addition to Wichita, Sedgwick County, Kansas (OCA 607861) No Cost to City

Drainage & Utility Easement from Hydro Sock III Corp dated January 30, 2012 for a tract of land lying part of Lots 3 and 4, Block A, Dan Schmidt 2<sup>nd</sup> Addition, Wichita, Sedgwick County, Kansas (OCA 607861) No Cost to City

Drainage Easement from Unified School District 259 dated November 9, 2011 for a tract of land lying in Lot 24, Block 7, Westlink Village Fifth Addition, Wichita, Sedgwick County, Kansas (OCA 607861) No Cost to City

Utility Easement from Unified School District 259 dated December 20, 2011 for a tract of land lying in Lot 1, Block A, West High School Addition, Wichita, Sedgwick County, Kansas (OCA 607861) No Cost to City

City of Wichita  
City Council Meeting  
April 17, 2012

**TO:** Mayor and City Council  
**SUBJECT:** Community Events – Ride for the Red (District I)  
**INITIATED BY:** Division of Arts & Cultural Services  
**AGENDA:** Consent

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**Recommendation:** Approve the request for temporary street closures.

**Background:** In accordance with the Community Events procedure the event promoter Brianna Falvey, Development Associate, American Red Cross is coordinating with City of Wichita staff, subject to final approval by the City Council.

**Analysis:** The following street closure request has been submitted:

**Ride for the Red June 16, 2012 7:00 am – 10:30 am**

- Douglas Avenue, Kansas Street to Nash Street – west bound curbside lane.

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

**Financial Consideration:** The event promoter is responsible for all costs associated with special events.

**Goal Impact:** Enhance the Quality of Life for citizens through special events and activities.

**Legal Consideration:** There are no legal considerations.

**Recommendation/Actions:** It is recommended that the City Council approve the request subject to: (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Securing a Certificate of Liability Insurance on file with the Community Event Coordinator.

**CITY OF WICHITA**  
**City Council Meeting**  
April 17, 2012

**TO:** Mayor and City Council

**SUBJECT:** Title Insurance, Abstract and Other Related Services – Selection of Vendor

**INITIATED BY:** Office of Property Management

**AGENDA:** Consent

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**Recommendation:** Approve the selection of Security 1<sup>st</sup> Title, LLC (Security 1<sup>st</sup>) for title insurance, abstracts, and other related services.

**Background:** City departments require various types of title, abstract, and closing services. To obtain the most qualified title company to provide this service at a cost that would be beneficial to the City, a Request for Proposal was sent to all qualified vendors. Two responses were received that met all requirements of the proposal.

**Analysis:** Two proposals were received. A staff screening and selection committee reviewed the proposals. During the review and negotiation process, it was learned that one of the proposing firms was being acquired by the other proposing firm, Security 1<sup>st</sup>. Security 1<sup>st</sup> is the current provider of title services and has performed well. The proposal received from Security 1<sup>st</sup> had no increases over the current contract. The proposal provides a fair and reasonable price for the services provided.

**Financial Considerations:** The contract does not obligate the City to any specific purchases or volume of purchases on title services but provides the City the ability to obtain title and closing services from a qualified, cost-effective vendor. The contract provides for various types of title, abstract, and closing services to be provided on a fixed cost per item.

**Goal Impact:** Quality title work allows for efficient acquisition of properties to support Efficient Infrastructure and other key goals.

**Legal Considerations:** The Law Department has reviewed the contract as to form. The contract will be for one year with annual renewal options for an additional two years.

**Recommendation/Action:** It is recommended that the City Council; 1) Approve the selection of Security 1<sup>st</sup> to provide title insurance, abstracts, and other related services, and 2) Authorize all necessary signatures.

**Attachments:** Contract

**CONTRACT**  
**for**  
**ABSTRACTS, TITLE INSURANCE AND**  
**OTHER RELATED SERVICES**

**BLANKET PURCHASE ORDER NUMBER BP240001**

**THIS CONTRACT** entered into this 17<sup>th</sup> day of April, 2012, by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called "**CITY**", and **SECURITY 1<sup>ST</sup> TITLE LLC** (Vendor Code Number 824259-002) whose principal office is at 434 N. Main, Wichita, Kansas, 67202, Telephone Number (316) 267-8371, hereinafter called "**VENDOR**".

**WITNESSETH:**

**WHEREAS**, the **CITY** has solicited proposals for **Abstracts, Title Insurance and Other Related Services** (Formal Proposal – FP130067) [Commodity Code Number 94646]; and

**WHEREAS**, **VENDOR** has submitted the proposal most beneficial to the **CITY** and is ready, willing, and able to provide the commodities and/or services required by the **CITY**.

**NOW, THEREFORE**, the parties hereto agree as follows:

1. **Scope of Services.** **VENDOR** shall provide to the **CITY** all those commodities and/or services specified in its response to Formal Proposal Number – FP130067 [Commodity Code Number 94646] which is incorporated herein by this reference the same as if it were fully set forth. The proposal package, including all specifications, plans and addenda, provided by the City of Wichita as part of the proposal letting process for Formal Proposal Number – FP130067 shall be considered a part of this contract and is incorporated by reference herein.

2. **Compensation.** **CITY** agrees to pay to **VENDOR** the **unit price as per Exhibit B for Abstracts, Title Insurance and Other Related Services** for Formal Proposal – FP130067 [Commodity Code Number 94646], for the City Manager's Office / Property Management Division as compensation as per the proposal, plans, specifications, addenda and **VENDOR's** proposal of November 22, 2011, and as approved by the City Council on April 17, 2012. **The pricing (Exhibit B) is based on costs per items and specifications of minimum and maximum time frames for performing each of the services.**

3. **Term.** The term of this contract shall be from **April 17, 2012 through March 31, 2013** with options to renew the contract under the same terms and conditions for an additional one (1) or two (2) successive one-year periods by mutual agreement of the parties. This contract is subject to cancellation by the city, at its discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to **VENDOR**.

4. **Indemnification and Insurance.**

a. **VENDOR** shall save and hold the **CITY** harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of **VENDOR**, its officers, agents, servants, or employees, occurring in the performance of its services under this Contract, or arising from any defect in the materials or workmanship of any product provided in the performance of this Contract.

5. **Independent Contractor.** The relationship of the **VENDOR** to the **CITY** will be that of an independent contractor. No employee or agent of the **VENDOR** shall be considered an employee of the **CITY**.

6. **Compliance with Laws.** **VENDOR** shall comply with all laws, statutes and ordinances which may pertain to the providing of services under this Contract.

7. **No Assignment.** The services to be provided by the **VENDOR** under this Contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the **CITY**.

8. **Non-Discrimination.** **VENDOR** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached hereto as Exhibit A.

9. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of any part of this Contract to create the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this Contract to maintain a suit for damages pursuant to the terms or provisions of this Contract.

10. **No Arbitration.** The Contractor and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in proposal documents is deemed void.

11. **Governing Law.** This contract shall be interpreted according to the laws of the State of Kansas.

**12. Representative's Authority to Contract.** By signing this contract, the representative of the contractor or vendor represents that he or she is duly authorized by the contractor or vendor to execute this contract, and that the contractor or vendor has agreed to be bound by all its provisions.

**IN WITNESS WHEREOF**, the parties have set their hands the day and year first above written.

**ATTEST:**

**CITY OF WICHITA, KANSAS**

\_\_\_\_\_  
Janis Edwards  
Deputy City Clerk

\_\_\_\_\_  
Carl G. Brewer, Mayor

**APPROVED AS TO FORM:**

**SECURITY 1<sup>ST</sup> TITLE LLC**

\_\_\_\_\_  
Gary E. Rebenstorf  
Director of Law

Glenn B. Edwards  
Signature

Glenn B. Edwards  
Print Signature Name

Sr. V.P. and Member  
Title (Managing Member)



Exhibit A

**REVISED NON-DISCRIMINATION AND  
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM  
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
  - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
  - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
  - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

# EXHIBIT B

The following is a list of services with an estimated annual quantity usage. Responses to this information shall be included with the proposal submission. Please identify and supply the individual costs per items and specify the minimum and maximum time frames for performing each of the following services:

15 EA: Ownership list for real estate (to include up to eight (8) lots or tracts or combinations thereof) \$ 100.00  
Cost Per List

Time to prepare list: Minimum 3 days Maximum 10 days

Additional charge for each additional lot: \$ 10.00

Additional charge for each additional tract: \$ 10.00

150 EA: Certificate of title contiguous parcels \$ 150.00  
Cost Per Title

Time to prepare certificate: Minimum 2 days Maximum 10 days

Additional parcels in the same name: \$ 75.00 if chains are the same, \$100.00 if the chains are different

30 EA: Closing fee (residential) \$ 400.00  
Cost Per Closing

Time to prepare closing statement: Minimum 1 day Maximum 3 days

30 EA: Closing fee (commercial) \$ 1.00  
Cost Per Closing  
(fee per thousand dollars on each contract up to \$1,000,000) Minimum commercial closing fee of \$400.00

Time to prepare closing statement Minimum 1 day Maximum 3 days

Additional fee per thousand dollars over \$1,000,000: \$ .10 per thousand

60 EA: Title insurance policy (one parcel) \$ See Rate Chart  
(plus premium and additional parcels charges as listed below)

Time to prepare title policy: Minimum 2 days Maximum 10 days

Per \$1,000 of Acquisition Cost up to \$50,000	\$ <u>These are all</u>
Per \$1,000 of Acquisition Cost from \$50,001 to \$100,000	\$ <u>included in</u>
Per \$1,000 of Acquisition Cost from \$100,001 to \$5,000,000	\$ <u>the rate chart</u>
Each for additional parcels	\$ <u>75.00</u>

Add an additional \$1.00 per thousand for amounts over \$1,000,000.00

**D. Additional Pertinent Information**

A proposed timetable for completion of the services described herein, including a detailed statement of work, outlining the vendors goals, objectives, methods, materials, procedures, and time lines for delivery of the proposed report, and a statement relating to the vendors ability to meet the required deadlines.

Include any other information that would demonstrate your qualifications and ability to provide services related to this proposal.

**VI. Evaluation Criteria**

All proposals submitted in response to the RFP will be evaluated with consideration focused toward, but not limited to, the following:

1. Ability to meet or exceed all requirements listed in the scope of services
2. Qualifications & Experience
3. References
4. Cost /Pricing
5. Time frame to completing work

**VII. Estimated Schedule**

Proposal Advertisement: November 7, 2011

Proposal Due Date & Time: November 22, 2011 at 3:00 p.m.

Staff Screening & Selection: Week of December 5, 2011

Contract Award: Week of December 12, 2011

**CITY OF WICHITA**  
**City Council Meeting**  
April 17, 2012

**TO:** Mayor and City Council Members

**SUBJECT:** Partial Acquisition at 4500 North Seneca for the Wichita-Valley Center Flood Control Levee Certification and Rehabilitation Project (District VI)

**INITIATED BY:** Office of Property Management

**AGENDA:** Consent

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**Recommendation:** Approve the acquisition.

**Background:** In 2007, the City of Wichita and Sedgwick County entered into an agreement with Federal Emergency Management Agency (FEMA) whereby it was agreed that the City and County would provide certification that the Wichita-Valley Center Flood Control levee system meet revised FEMA levee standards. As part of this certification process, certain portions of the levee system were identified as needing rehabilitation. The property at 4500 North Seneca is impacted by the Levee Project. The property is situated against a bend in the Arkansas River. A floodway easement is required around the perimeter of the property adjacent to the river. The acquisition area is comprised of 26,992 square feet. A fence and a liquid material containment berm will be reset by the property owner.

**Analysis:** The owner accepted the appraised value of \$8,100, or \$0.30 per square foot. The amount for the fence and berm are based on estimates to perform the work.

**Financial Considerations:** The funding source for the project is General Obligation Bonds. A budget of \$38,252 is requested. This includes \$8,100 for the acquisition, \$29,652 for the fence and berm, and \$500 for closing costs and title insurance.

**Goal Impact:** The acquisition of this parcel is necessary to ensure Efficient Infrastructure by improving storm water issues in a major residential area.

**Legal Considerations:** The Law Department has approved the real estate agreement as to form.

**Recommendations/Actions:** It is recommended that the City Council; 1) Approve the budget; 2) Approve the real estate agreement; and 3) Authorize the necessary signatures.

**Attachments:** Real estate agreement, tract map, and aerial map.

## FLOODWAY LEVEE EASEMENT PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012 by and between Lafarge North America, Inc, hereinafter referred to as "Grantor," whether one or more, and City of Wichita, Kansas, a municipal corporation, hereinafter referred to as "Grantee," whether one or more.

**WITNESSETH:** That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Grantor does hereby agree to sell and convey to the Grantee by a Flood Protection Levee the following described real property, situated in Sedgwick County, Kansas, to wit:

Attached as Exhibit A

2. The Grantee hereby agrees to purchase, and pay to the Grantor, as consideration for the rights to the above described real property the sum of Eight Thousand One Hundred Dollars (\$8,100) in the manner following, to-wit: cash at closing.
3. A complete abstract of title certified to date, or a title insurance commitment to insure to the above described real property, showing a merchantable title vested in the Grantor, subject to easements and restrictions of record is required.

The Title Evidence shall be sent to City of Wichita, KS, Property Management Division for examination by Grantee as promptly and expeditiously as possible, and it is understood and agreed that the Grantor shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title. Should Grantee be unable to correct any title defects at reasonable cost within a reasonable time, Grantee may either (i) waive the defects and close on this Agreement, or (ii) terminate this Agreement. Should Grantee elect to terminate the Agreement, neither party shall have any further obligation to the other party hereunder.

Grantee will order title at its cost.

4. A duly executed copy of this Easement Purchase Agreement shall be delivered to the parties hereto.
5. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before March 30, 2012.
6. The Grantor further agrees to grant Grantee the described land and to maintain the property in its same condition, reasonable wear and tear excepted.
7. Grantee will pay 100% closing costs.
8. Site Assessment
  - A. At any time prior to the closing of this agreement, Grantee shall have the right

to conduct or cause to be conducted, at Grantee's expense, an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, Grantee shall have the right to void this agreement upon notice to the Grantor, in which event neither party shall be under any further obligation to the other, with the exception that Grantor shall return to Grantee any deposit made hereunder.

B. Provided, however, Grantee shall in no event be obligated to close before the completion of a site assessment made pursuant to Paragraph A above. Grantee shall, if Grantee determines a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment after this agreement is executed by all parties.

9. Grantee hereby agrees to compensate Grantor for the cost to reset or replace the chain link fence and material containment berm no later than thirty days after Grantor has notified, in writing, Grantee of the amount of such costs.

**WITNESS OUR HANDS AND SEALS** the day and year first above written.

**GRANTOR:**

Lafarge North America, Inc:

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---

**GRANTEE:**

---

Carl Brewer, Mayor

**ATTEST:**

---

Karen Sublett, City Clerk

**Approved as to Form:**

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Gary E. Rebenstorf, Director of Law



# EXHIBIT A

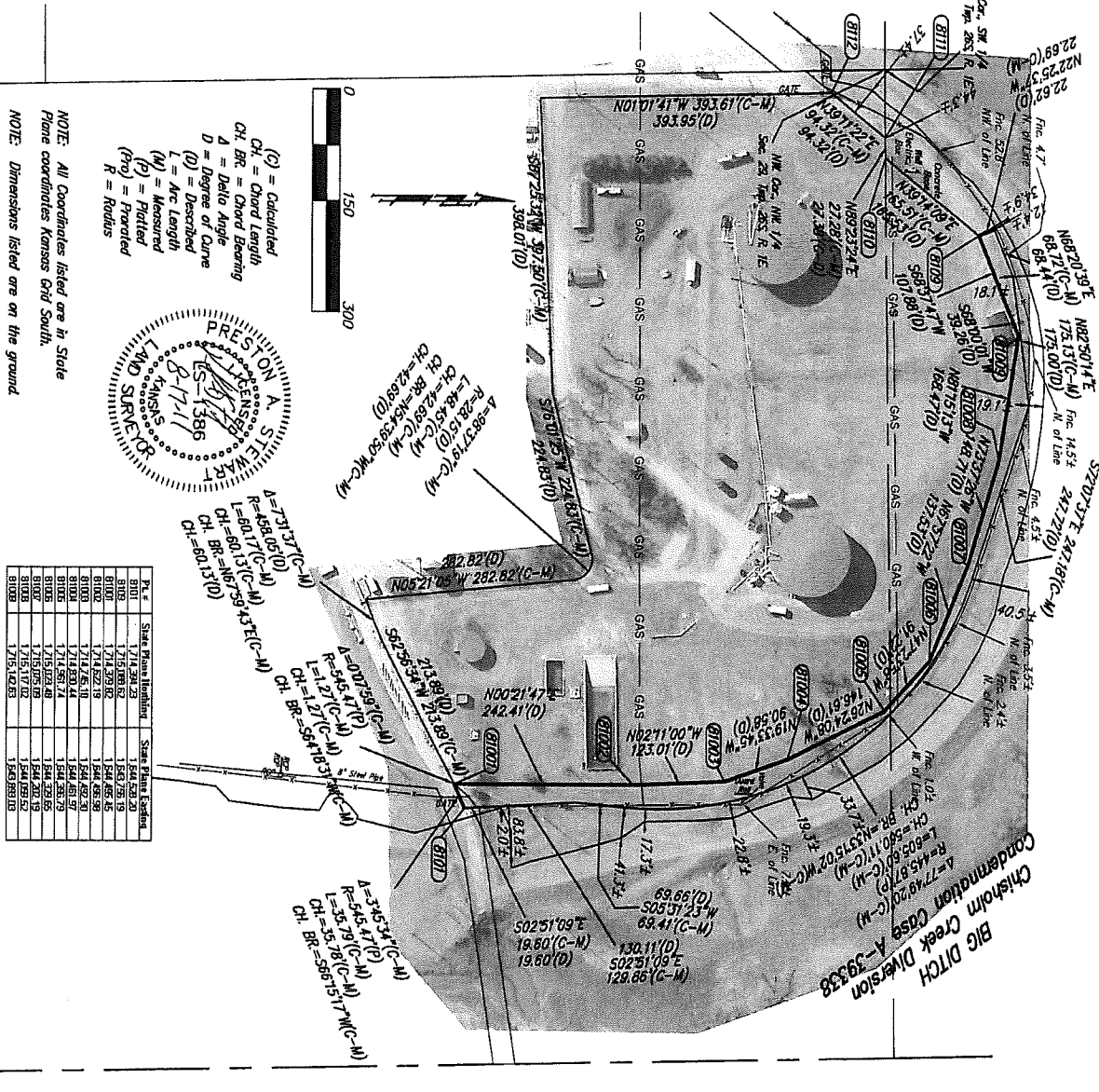
LeForge North America Inc. Tract "B" (Key A-00339-00100)  
 ADDITIONAL TAKING DESCRIPTION:

A tract of land in the Southwest Quarter of Section 20 and the Northwest Quarter of Section 29, Township 26 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas, being more particularly described as follows: Commencing at a point on the South line of said Section 20, 118.22 feet east of the Southwest corner of said Section 20, thence N 39°51'00" E for a distance of 165.53 feet to the Point of Beginning, thence N 20°32'00" W for a distance of 22.62 feet; thence N 68°59'00" E for a distance of 68.44 feet; thence N 83°37'00" E for a distance of 175.00 feet; thence S 71°28'00" E for a distance of 247.72 feet to a point of curvature, thence along a 1251.02' curve to the right described by the following chord bearings and distances: S 68°12'00" E for a distance of 50.98 feet; thence S 58°30'00" E for a distance of 99.79 feet; thence S 45°39'00" E for a distance of 59.22 feet; said point being calculated as being 772.88 feet east of the Southwest corner of said Section 20, said point is calculated at a distance of 863.72 feet; thence continuing along a 1251.02' curve to the right described by the following chord bearings and distances: S 45°39'00" E for a distance of 40.57 feet; thence S 32°48'00" E for a distance of 99.79 feet; thence S 19°57'00" E for a distance of 99.79 feet thence S 13°55'00" E for a distance of 153.91 feet to a point of tangency, thence S 62°10'00" W for a distance of 69.66 feet; thence S 20°00'00" E for a distance of 130.11 feet per recorded tract numbers 73(4), 73(8), and 76 of the Chisholm Creek Division, Condemnation Case A-39338, thence S 20°00'00" E for a distance of 19.60 feet to the intersection of a 15' offset of the centerline of the railroad tracks; thence on a curve to the left a length of 35.79 feet having a radius of 545.47 feet with a chord bearing of S 66°15'17" W for a distance of 35.78 feet; thence N00°21'47" E, 242.41 feet; thence N02°11'00" W, 123.01 feet; thence N19°33'45" W, 50.58 feet; thence N26°24'08" W, 146.61 feet; thence N47°23'58" W, 91.22 feet; thence N67°57'22" W, 137.53 feet; thence N73°37'26" W, 148.71 feet; thence N87°15'13" W, 168.47 feet; thence S68°00'01" W, 39.26 feet; thence S68°37'47" W, 107.88 feet to the point of beginning.

Additional take contains 26,991.7 Square Feet or 0.620 Acres

## Tract #81 - Exhibit Portion SW 20, and NW 29, Twp. 26S, R.1E Sedgwick County, Kansas

Baughman	
Baughman Company, P.A. 315 Ellis St., Wichita, KS 67211 F 316-262-0449	
ENGINEERING   SURVEYING   PLANNING   LANDSCAPE ARCHITECTURE	
REVISIONS	APPROVED
DATE	DATE
SCALE	SCALE
1"=60'	August 17, 2011
E:\Projects\WNCES_10A17P6871\Draws\B-New Take.dwg	
10/07/P687	



# ripley



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Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

**CITY OF WICHITA**  
**City Council Meeting**  
April 17, 2012

**TO:** Mayor and City Council

**SUBJECT:** Acquisition of 527 South Webb Road for the Improvement of the Kellogg Avenue (US Highway 54) from Cypress to Chateau (District II)

**INITIATED BY:** Office of Property Management

**AGENDA:** Consent

---

**Recommendation:** Approve the offers.

**Background:** On February 8, 2011, the City Council approved the design for the improvement of Kellogg Avenue (US Highway 54) from Cypress to Chateau. The project calls for the improvement of Kellogg to a six lane, limited access highway with one way frontage roads on each side of the highway and interchanges at the intersections of Webb Road and the Kansas Turnpike (Interstate Highway 35). The project will require the acquisition of all or part of approximately 32 parcels. The properties consist of a mix of retail and commercial uses. The property located at 527 South Webb Road is a 119 room franchised transient lodging facility located on 79,597 square feet of land. The project requires 57,710 square feet of the site and impacts all the improvements.

**Analysis:** The acquisition was appraised at \$3,945,000. The owner has accepted this amount. In addition, the owner will receive \$155,000 as compensation for moving costs, site search expenses, and reestablishment. The total purchase price is \$4,100,000.

**Financial Considerations:** A budget of \$4,151,000 is requested. This includes \$3,945,000 for the acquisition, \$155,000 for relocation, \$50,000 for demolition and \$1,000 for the closing costs and other administrative costs. The funding source is Local Sales Tax (LST) and, State and Federal grant funds administered by the Kansas Department of Transportation.

**Goal Impact:** The acquisition of this easement is necessary to ensure Efficient Infrastructure by improving an arterial street through a developed part of the City.

**Legal Considerations:** The Law Department has approved the real estate agreement as to form.

**Recommendation/Action:** It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Real Estate Purchase Agreement; and 3) Authorize the necessary signatures.

**Attachments:** Aerial map, tract map, and real estate purchase agreement.

PROJECT: East Kellogg DATE: 03/14/12  
COUNTY: Sedgwick TRACT NO.: 7

THE CITY OF WICHITA, KANSAS

**CONTRACT FOR CONVEYANCE**  
**OF REAL ESTATE BY WARRANTY DEED**

THIS AGREEMENT Made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between

E & P Financing Limited Partnership  
1800 W. Pasewalk Avenue, Suite 200  
Norfolk, NE 68701  
(Name and Address)

landowner(s), and the City of Wichita of the State of Kansas.

**WITNESSETH**, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey fee title to the City of Wichita by Special Warranty Deed to the following described real estate in the County of Sedgwick, State of Kansas, to wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City of Wichita. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City of Wichita and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property and the date of relocation. In no event will the landowner(s) be required to move until the City becomes legally entitled to the property.

The City of Wichita agrees to purchase the above described real estate, and to pay therefore, the following amount to Landowner on June 1, 2012. Landowner shall surrender possession at closing. Landowner's offer herein expires April 30, 2012 if not accepted by City on or prior to such date.

Landowner shall remove all personal property prior to closing. Any personal property remaining in or upon said property after closing shall be considered abandoned. The City of Wichita may dispose of any remaining personal property in any way it deems without further compensation to Landowner.

All real estate taxes to be prorated at escrow closing. All closing fees and recording fees to be paid by the City of Wichita.

The parties hereto agree that the Property is being sold under imminent threat of condemnation. The Property is also being sold in its "AS IS" condition with no representations or warranties of any kind.

Real property to be acquired as right of way:

79587 sq. ft and all improvements thereto

\$ 3,945,000.00

Relocation assistance payment

Moving Search and reestablishment

\$ 155,000.00

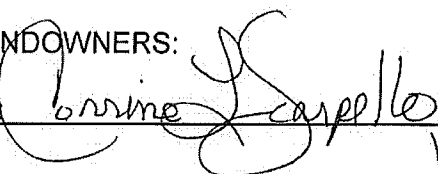
**TOTAL:** \$ 4,100,000.00

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

**IN WITNESS WHEREOF** The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:

By:

 V.P.

By: \_\_\_\_\_

THE CITY OF WICHITA

ATTEST:

By: \_\_\_\_\_

Carl Brewer, Mayor

By: \_\_\_\_\_

Karen Sublett, City Clerk

## MEMORANDA

Exact and full name of owner, as name appears of record:

E & P Financing Limited Partnership

If mortgage or other liens, show names of holders:

Great Western Bank

## REMARKS:

PIN/APN C-44296-0003

Security Title File Number 2034256

APPROVED TO FORM:

\_\_\_\_\_  
Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

\_\_\_\_\_  
Gerald Cain, Project Manager

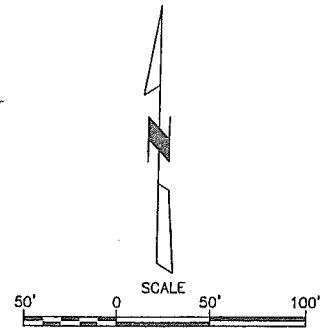


# EXHIBIT

## RIGHT OF WAY ACQUISITION

Tract # 7-A

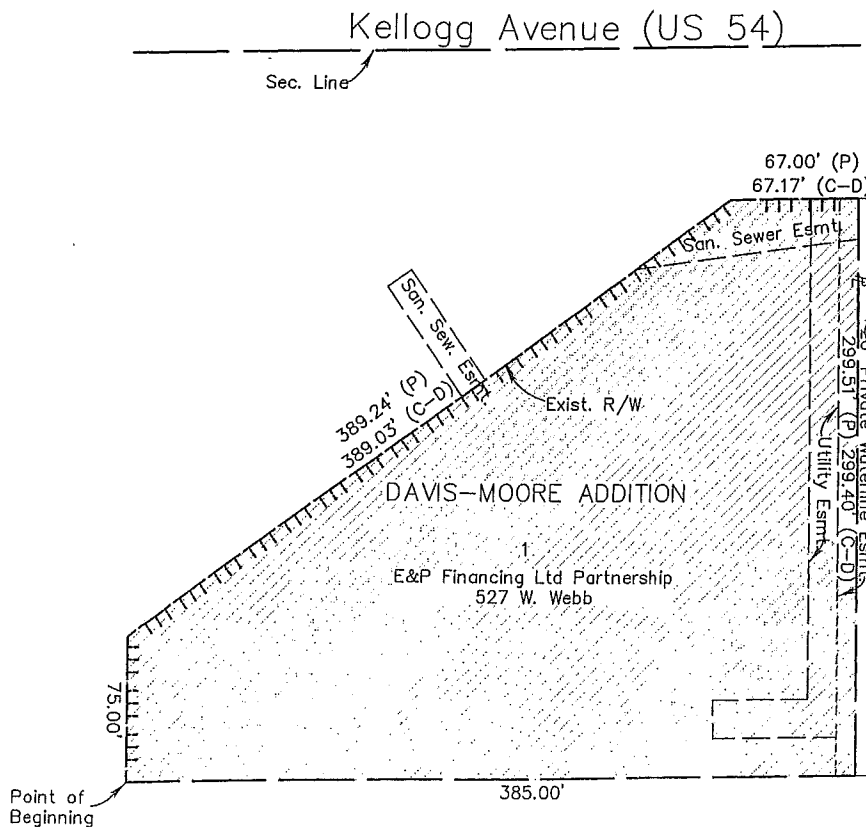
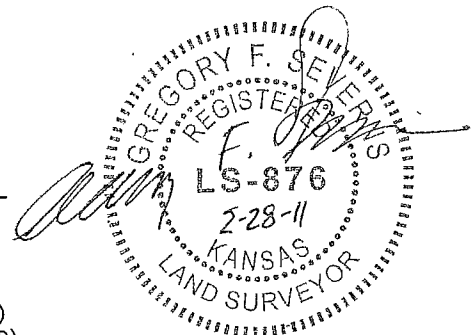
C-44296-3



### LEGAL DESCRIPTION:

Beginning at the southwest corner of Lot 1, Davis-Moore Addition, Wichita, Kansas, Sedgwick County, Kansas; thence with an assumed bearing of N00°00'00"E on the west line of said Lot 1, a distance of 75.00 feet; thence N54°47'00"E on the northwesterly line of Lot 1, a distance of 389.24 feet (platted), 389.03 feet (calculated per described information), to the northwest corner of said Lot; thence N89°57'38"E (calculated per platted information), N89°57'08"E (calculated per described information), on the north line of said Lot, a distance of 67.00 feet (platted), 67.17 feet (calculated per described information), to the centerline of the 20 foot wide private water easement as recorded on Film 618, Page 1038; thence S00°00'00"E on said centerline, a distance of 299.51 feet, more or less (platted), 299.40 feet (calculated per described information), to the south line of Lot 1; thence S90°00'00"W on the south line of said Lot 1, a distance of 385.00 feet to the point of beginning.

Containing 79597.3 Sq. Ft., (calculated)



) Platted  
(C-D) Calculated Per Described Information

Project Number 10-07-E517

E:eng/East Kellogg/Exhibits/Tract 7-A.dwg

**Baughman Company, P.A.**

315 Ellis St. Wichita, KS 67211 P 316-262-7271 F 316-262-0149

**Baughman** ENGINEERING | SURVEYING | PLANNING | LANDSCAPE ARCHITECTURE

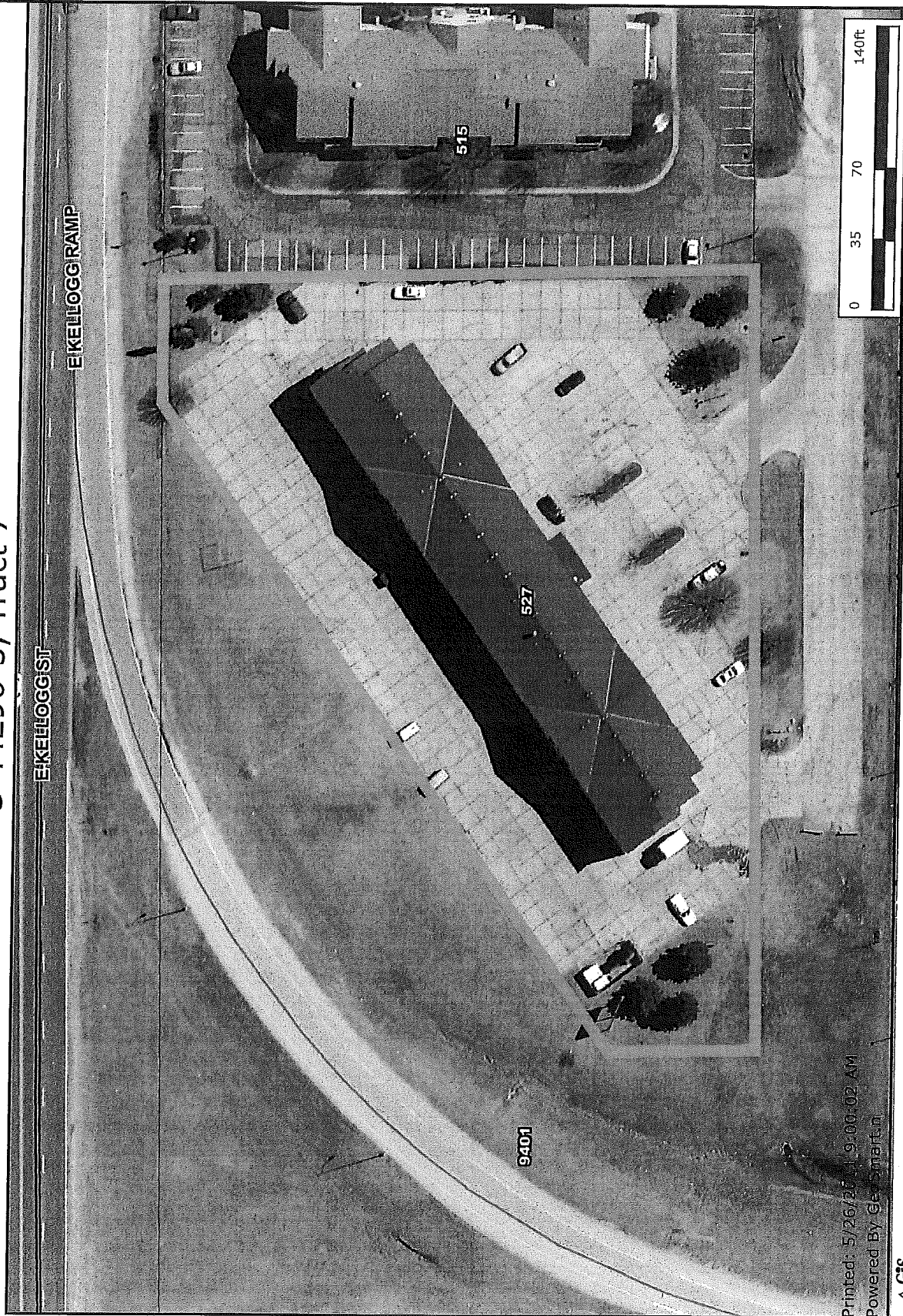
2-28-11



# 527 S Webb Rd

## C-44296-3, Tract 7

- Identified Features
- Selected Features
- Property Parcels
- Roads
  - State Highway
  - US Federal Highway
  - Interstate
  - KTA
  - Arterial
  - Collector
  - Minor
  - Ramp



Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.



**CITY OF WICHITA**  
**City Council Meeting**  
April 17, 2012

**TO:** Mayor and City Council

**SUBJECT:** Acquisition of Access Control at 13200 West Kellogg for the West Kellogg Freeway Project (Districts IV and V)

**INITIATED BY:** Office of Property Management

**AGENDA:** Consent

---

**Recommendation:** Approve the acquisition.

**Background:** On January 6, 2009, the City Council approved the design concept for the Kellogg Freeway, between 111<sup>th</sup> Street West and 143<sup>rd</sup> Street West. The proposed improvements include widening the freeway from two lanes in each direction to three lanes in each direction, frontage roads, and grade separation at 119<sup>th</sup> Street West and 135<sup>th</sup> Street West. There are 43 tracts which will be impacted by the project. Included in this list is 13200 West Kellogg. The parcel is rectangular, unimproved, zoned for commercial use and has 315 feet of frontage on Kellogg.

**Analysis:** The project requires access control along the westerly 150 feet of the south side of the property. The proposed access control was valued at \$500. This amount was offered to the owner and rejected. The owner felt that restricting access over the west half of the site would prevent them from getting two drives if the site were ever developed. After negotiation, the owners accepted \$4,000. Settlement avoids the risk associated with eminent domain and saves the associated administrative costs and the time involved in the process.

**Financial Considerations:** A budget of \$4,100 is requested. This includes \$4,000 for the acquisition, and \$100 for the administrative costs. The funding source is Local Sales Tax (LST) and, State and Federal grant funds administered by the Kansas Department of Transportation.

**Goal Impact:** The acquisition of this property is necessary to ensure Efficient Infrastructure by improving an arterial street through a developed part of the City.

**Legal Considerations:** The Law Department has approved the real estate agreement as to form.

**Recommendation/Action:** It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Real Estate Purchase Agreement; and 3) Authorize the necessary signatures.

**Attachments:** Aerial map, tract map, and real estate purchase agreement.



PROJECT: West Kellogg DATE: \_\_\_\_\_

COUNTY: Sedgwick TRACT NO.: 28

THE CITY OF WICHITA, KANSAS

**CONTRACT FOR CONVEYANCE**  
**OF REAL ESTATE BY QUIT CLAIM DEED**

THIS AGREEMENT Made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between

Paramount Antique Mall, LLC

601 N Broadway Avenue, Wichita, KS 67214

(Name and Address)

landowner(s), and the City of Wichita of the State of Kansas.

**WITNESSETH**, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey fee title to the City of Wichita by Quit Claim Deed to the following described real estate in the County of Sedgwick, State of Kansas, to wit:

SEE EXHIBIT "TRACT 28 – AT -145" Attached hereto and made a part hereof.

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City of Wichita. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City of Wichita and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property and the date of relocation. In no event will the landowner(s) be required to move until the City becomes legally entitled to the property.

The City of Wichita agrees to purchase the above described real estate, and to pay therefore, the following amount within sixty days after the warranty deed conveying said property free of encumbrance has been delivered.

Real property to be acquired as right of way:

\_\_\_\_\_ (Sq. Ft.)

\$ \_\_\_\_\_ N/A

Temporary Easement for construction:

\_\_\_\_\_ N/A (Sq. Ft.)

\$ \_\_\_\_\_ N/A

All rights of Access to West Kellogg Street

\$ \_\_\_\_\_ 4,000.00

Improvement & Buildings acquired with right of way:

None

**TOTAL:** \$ \_\_\_\_\_ 4,000.00

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

**IN WITNESS WHEREOF** The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:

By: \_\_\_\_\_

Cynthia C. Branch, Managing Member

THE CITY OF WICHITA

By: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Carl Brewer, Mayor

By: \_\_\_\_\_

Karen Sublett, City Clerk

## MEMORANDA

Exact and full name of owner, as name appears of record:

\_\_\_\_\_  
If mortgage or other liens, show names of holders:

## REMARKS:

PIN/APN 147250330000100

Security Title File Number

APPROVED TO FORM:

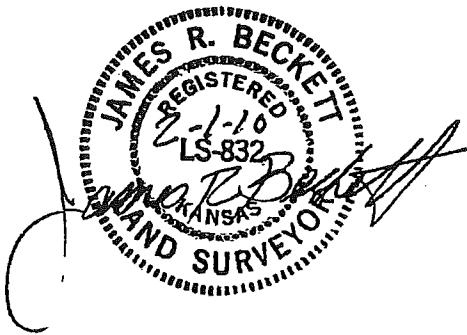
\_\_\_\_\_  
Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

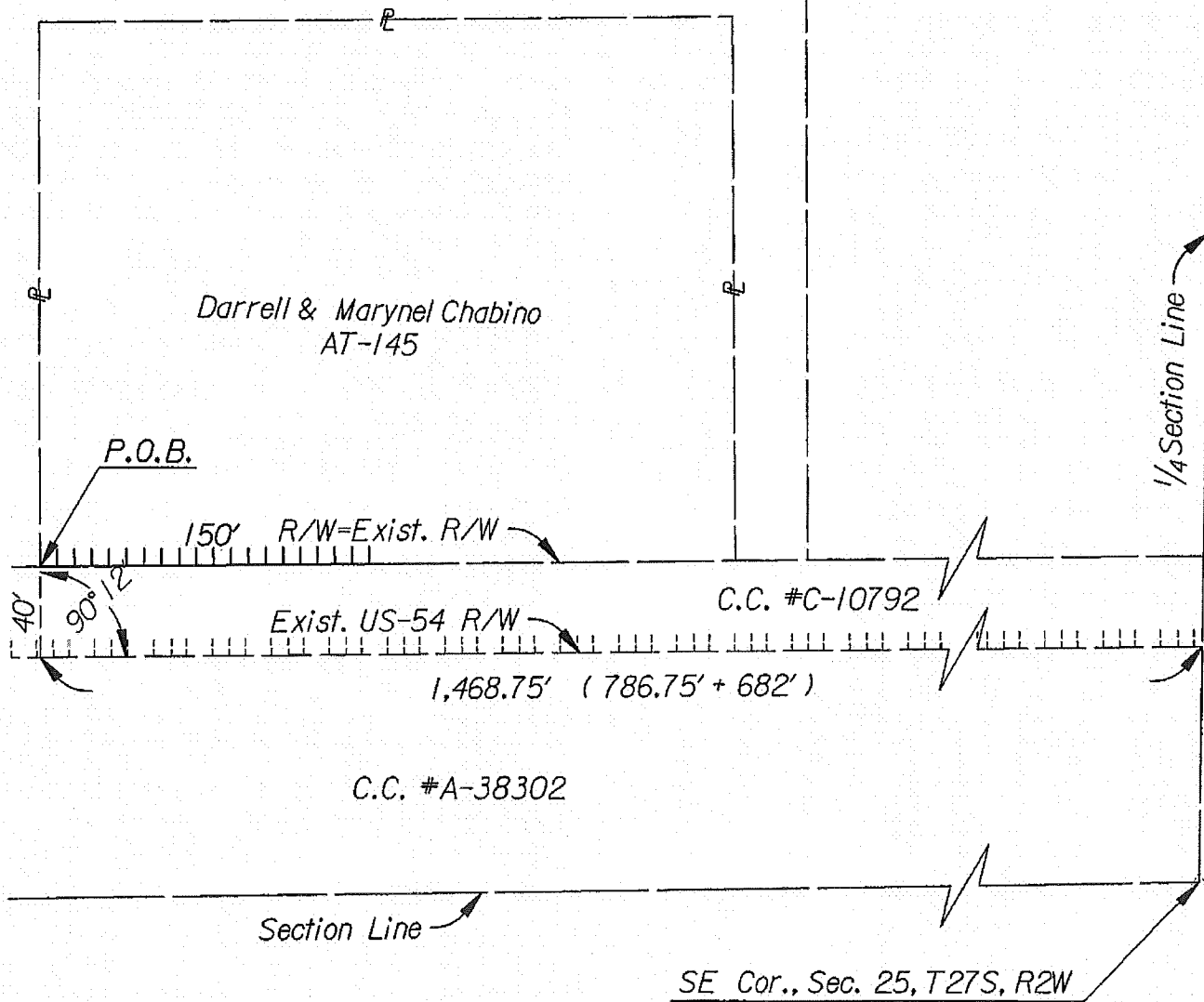
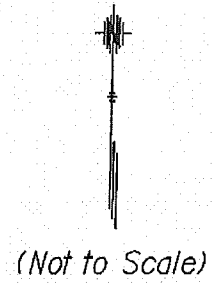
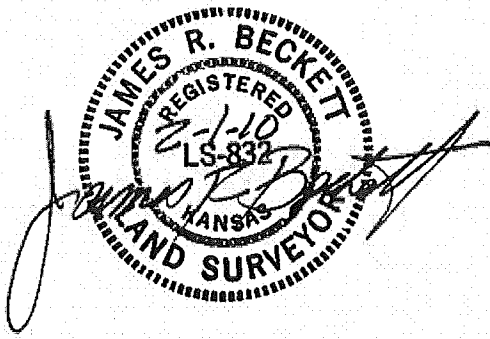
*for* \_\_\_\_\_  
Gerald Cain, Project Manager

Tract #28 – AT-145  
Darrell & Marynel Chabino  
All Right of Access

All right of access to and from the abutting public roadway over and across a line in the Southwest Quarter of Section 25, Township 27 South, Range 2 West of the 6<sup>th</sup> P.M., Sedgwick County, Kansas, described as follows: Commencing from a point on the North right-of-way line of U.S. 54 Highway per Condemnation Case A-38302 and 786.75 feet West of the East line of said Southwest Quarter; thence West along said North highway right-of-way line a distance of 682 feet; thence North at an interior angle of 90 degrees 12 minutes a distance of 40 feet to a point on the North right-of-way line of U.S. 54 Highway per Condemnation Case C-10792, said point being the point of beginning; FIRST COURSE, thence East along said North highway right-of-way per Condemnation Case C-10792 a distance of 150 feet.

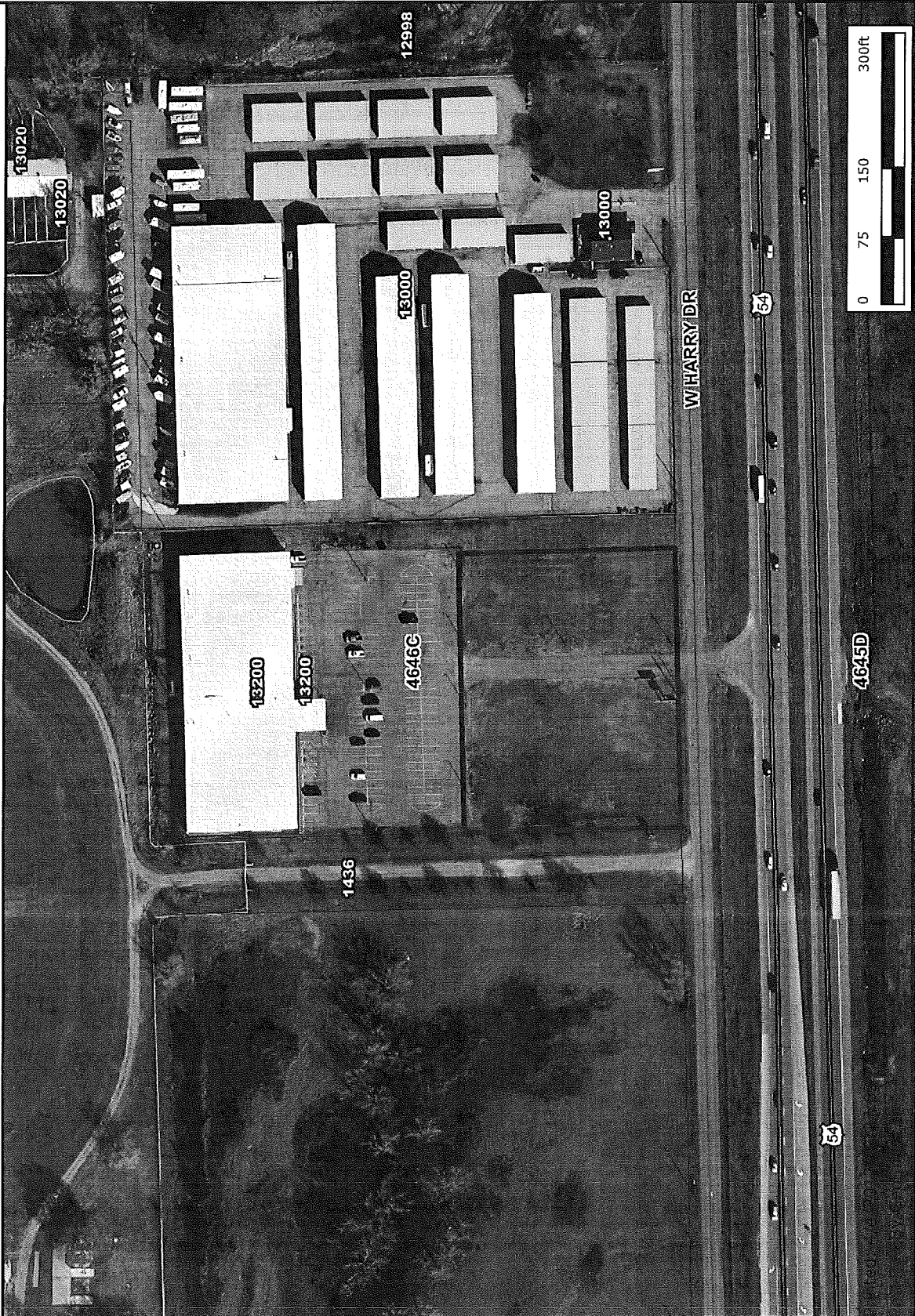


Tract #28 - AT-145  
All Right of Access





# 13200 West Kellogg



- Identified Features
- Property Parcels
- Roads
  - State Highway
  - US Federal Highway
  - Interstate
  - KTA
  - Arterial
  - Collector
  - Minor
  - Ramp
- Railroads
- Quarter Section
- Waterways
- Streams
- Parks
- Airports
- SPERASTER, S-DEDATA, ORTH-01FT
- SPERASTER, S-DEDATA, ORTH-01FT
- City Limits
  - Andale
  - Bel Aire
  - Bentley
  - Cheney
  - Clearwater
  - Colwich
  - Derby
  - Eastborough
  - Garden Plain
  - Goddard
  - Haysville
  - Kechi
  - Maize
  - Mount Hope



Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.



**CITY OF WICHITA**  
**City Council Meeting**  
April 17, 2012

**TO:** Mayor and City Council

**SUBJECT:** Sale of City Properties at 1405, 1457, 1503 and 1515 South 119<sup>th</sup> (District V)

**INITIATED BY:** Office of Property Management

**AGENDA:** Consent

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**Recommendation:** Approve the sale.

**Background:** The City acquired four residential properties at the above addresses as part of the project to improve 119<sup>th</sup> Street West from Kellogg to Maple. The project required the utilization of portions of the front yards and the reconstruction of the driveways. The properties are all currently zoned residential and improved with single-family residences. The houses have been vacant since acquired in mid-2010. All the houses have a single story with a basement and attached two car garages. The City Council declared the properties surplus to the City's needs on January 10, 2012. The parcels have been marketed since that time on the internet, in newspaper advertisements, in mailings to real estate professionals and by open house showings.

**Analysis:** Several offers have been received for both individual houses and all four properties as a group. The highest offer is \$350,000 for all four houses. This represents \$70,000 for 1405 South 119<sup>th</sup>, \$85,000 for 1457 South 119<sup>th</sup>, \$95,000 for 1503 South 119<sup>th</sup> and \$100,000 for 1515 South 119<sup>th</sup>. The individual values of the offer also exceed any individual offer received on a single house. The buyer intends to renovate the properties and lease or sell them.

**Financial Considerations:** The City will receive cash consideration for the sale of the properties. In addition, the sale of this property to a private party will place additional value into the tax base and relieve the City of any maintenance costs. The funds will be deposited into the capital project to reduce future debt requirements.

**Goal Impact:** The sale and redevelopment of this property will support Efficient Infrastructure by returning funds to the capital improvement funds and, Economic Vitality by promoting the redevelopment of a vacant site.

**Legal Considerations:** The Law Department has approved the contract as to form.

**Recommendation/Action:** It is recommended that the City Council approve the Real Estate Purchase Agreement and authorize all necessary signatures.

**Attachments:** Real Estate Purchase Agreement and aerial.



# 119th Street Properties



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**City of Wichita  
City Council Meeting  
April 17, 2012**

**TO:** Mayor and City Council

**SUBJECT:** WaterWalk, Waltzing Waters Plaza Sound System (District I)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

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**Recommendation:** Approve the proposal and authorize the issuance of a purchase order.

**Background:** On September 14, 2010, the City Council approved a revised WaterWalk Master Plan that located the Waltzing Waters Fountain on the east side of Wichita Street midway between Dewey on the south and WaterWalk Place on the north. The architects then completed the design for this area and produced the construction documents required for competitive bidding. Snodgrass and Sons Construction Co. Inc. was the low bidder and was awarded a contract for the construction in the amount of \$1,816,000, which was well below the estimate of \$2,697,635.

**Analysis:** The Waltzing Waters fountain is designed to operate in conjunction with recorded music. The fountain manufacturer provides the points for connecting to an owner-supplied sound system. The City underwent a comprehensive selection process in the past for upgrading the sound/broadcast system in the Council Chamber and other facilities in City Hall. This process identified Ford AV as the only company in this part of the nation with the full scope of products, experience and services required to meet the City's needs on complex AV projects. Ford AV was asked to provide a proposal to design, supply and install the Waltzing Waters sound system which will be contracted directly by the City and installed in the final steps of the construction process.

Ford AV has proposed to supply and install the Waltzing Waters sound system for \$73,883.

**Financial Considerations:** The cost of Waltzing Waters sound system will be paid from City funds previously allocated for WaterWalk projects. No additional funding is required.

**Goal Impact:** The Waltzing Waters fountain and surrounding plaza will improve the Quality of Life for the people of Wichita and for visitors to our City. It will also aid in economic development by drawing more people to the downtown area.

**Legal Considerations:** The Law Department has approved the proposal as to form. Determination for this vendor as a sole source of supply eliminates the need for public advertising for bids under City Code 2.64.020 (b)

**Recommendation/Action:** It is recommended that Council approve the proposal and authorize the issuance of a purchase order.

**Attachment:** Ford AV Proposal.





*Helping People Communicate!*

Revised: April 6, 2012

Mr. Ed Martin  
City of Wichita  
455 N. Main Street  
Wichita, KS 67202

Dear Mr. Martin:

Ford Audio-Video Systems, Inc. (Ford AV) respectfully submits for your consideration the attached proposal for the **Waltzing Waters** which covers the details of the system requirements in the following outline:

- A. Introduction
- B. Description of Work
- C. Installation Schedule
- D. Equipment List
- E. Cost Summary and Terms
- F. Preventative Maintenance Program
- G. Guarantees and Limitations of Warranty
- H. Training and Documentation
- I. Building Construction, Installation and Responsibilities
- J. Discussion of Technology
- K. Acceptance

The proposed systems are based upon our understanding of your requirements as communicated to us during our meetings and conversations. If there are any changes that need to be made, please let us know. We invite you to compare our systems with any other; in quality, price, and professionalism of installation, we are second to none.

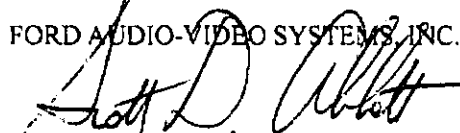
Sincerely,

FORD AUDIO-VIDEO SYSTEMS, INC.



Ronald C. Hoeberling  
Account Manager

FORD AUDIO-VIDEO SYSTEMS, INC.



Scott D. Abbott  
Director of Sales

Voice: 405-946-9966  
Cell: 913-708-1908  
E-mail: hoebr@fordav.com  
Website: www.fordav.com

## **Proposal**

### **For**

### **City of Wichita, Wichita, KS**

#### **A. INTRODUCTION**

This proposal provides a description of the technology incorporated into the systems, lists the major equipment and components, and states the terms, conditions, and responsibilities. Individual components and quantities may be changed, deleted, added, or designated as optional to be added to the system at a future date.

#### **B. DESCRIPTION OF WORK**

Ford Audio-Video Systems, Inc. (Ford AV) shall provide and install the following WaterWalk audio system for the City of Wichita of Wichita, Kansas:

##### **1. AUDIO SYSTEM**

- a. Eight (8) all-weather 12", 2-way loudspeakers shall be installed on six (6) owner furnished equipment (OFE) poles installed around the pond per Ford AV's requirements.
- b. Nine (9) outdoor weather-resistant 8", 2-way ground-mounted loudspeakers shall be installed near the edge of the pond with five (5) on the east side and four (4) on the west side.
- c. Conduit from equipment room to all speakers shall be provided by Owner.
- d. Ford AV shall install an auxiliary audio input (1/8" stereo jack) in the equipment rack for an OFE iPod, MP3 player, satellite radio, etc.
- e. Ford AV shall install a microphone connector near the equipment room entrance for an OFE microphone.
- f. An audio playback system shall be installed to allow audio files to be stored and played back as follows:
  - 1) WaterWalk music and control-data shall be stored on the system and scheduled for playback per the Owner's schedule. The music and control-data are synchronized to control the WaterWalk fountain activities when the music plays. A separate output shall be provided to connect to the WaterWalk fountain control system.
  - 2) WaterWalk announcements shall be recorded by the Owner and scheduled for playback before the WaterWalk music starts. The same or multiple announcements can be scheduled several times (5 min, 3 min, 1 min, etc.) before the music starts.

- 3) If background music is required between WaterWalk performances, the Owner shall provide music files or an audio feed for this purpose. The background music shall be scheduled to play when no other audio input is being played and will be automatically ducked when announcements or the WaterWalk music is playing. The background music can also be scheduled to play only certain hours (e.g.: 7am – 10pm) and can be changed for different seasons or holidays and will resume several minutes after the WaterWalk music ends. A separate audio input (RCA L-R) shall be provided at the rack for the external background music audio feed.
- 4) Music files and schedules shall be updated on site in the equipment room or remotely from any PC on the Owner's network. Owner is responsible for providing a network connection in the equipment room for the remote PC access.
- g. Ford AV shall install a telephone interface system to allow the police department to call the WaterWalk system to make announcements or speak to spectators and visitors. This will be used in conjunction with an OFE motion detection and security camera system to allow the police department to view visitors and speak to them if they see something that concerns them. These calls will automatically duck any music or other programming (including the fountain control) during the telephone announcements. The regular program will resume when the phone call ends. Owner is responsible for providing a telephone connection in the equipment room.

## 2. CONTROL SYSTEM

- a. A Crestron X-Panel program shall be configured on the OFE PC and programmed to control the following functions in the equipment room:
  - 1) Schedule background music, announcements, and WaterWalk music
  - 2) Schedule the crossing gates on the west side of the pond to open and close (synchronized with the announcements) via a relay closure
  - 3) Schedule volume adjustments for different times of the day
  - 4) Provide automatic email alerts during equipment or power failures
  - 5) All schedule and control functions can be controlled from any PC on the Owner's network. Owner is responsible for providing a network connection in the equipment room.
- b. One (1) control system, with 4" touch panel, shall be installed and programmed to control the following functions:
  - 1) Make live volume adjustments on site
  - 2) Allow an external audio input to be connected to the system for live outdoor announcements and/or music during special events

3) Start, stop, or reset the system

- c. All audio storage and control systems shall be protected from power failures with a uninterruptible power supplies (UPS.)

4. MAINTENANCE AGREEMENT

- a. 1-Year WaterWalk maintenance, at 2 visits per year: \$2,210 (renewable each year for the same price)
- b. 1-Year City Council Chambers maintenance (available if WaterWalk maintenance is purchased), 2 visits per year: \$1,500 (renewable each year for the same price)

C. INSTALLATION SCHEDULE

1. Ford AV estimates that the actual on-site installation of your project will take two weeks. In addition to the installation, Ford AV shall prepare system drawings, purchase the equipment, assemble the equipment in our shop, program control software as required and do in-shop testing. This work will take approximately six weeks prior to the beginning of actual installation at your facility. The total time required to complete the project shall be approximately eight weeks. The completion of Ford AV's work depends upon the facility being secure, dust-free, air-conditioned, and quiet.
2. Please note that Ford AV must receive the signed contract and down payment prior to beginning any work on this project including engineering, purchasing of equipment, and the scheduling of the installation. For Ford AV to meet the above completion schedule it is important that the Customer ensure that the job site is available for Ford AV personnel and that there are no interruptions in the availability of the job site and the ability of Ford AV to do the work. Ford AV schedules its work force weeks in advance in order to meet the installation completion dates of all of its customers. As a consequence, it is vital that the Customer notify Ford AV's Project Manager in the event that the Customer changes the schedule or the Customer's other contractors fall behind in completing their portion of the work.

D. EQUIPMENT LIST

POLE SPEAKERS

Quantity	Description	Price	Extension
8.00	ONE SYSTEMS 112IM SPEAKER	1,070.00	8,560.00
8.00	ONE SYSTEMS HWK-1 HARSH WE KIT	46.00	368.00
8.00	ONE SYSTEMS 112IM-U U BRACKET	156.00	1,248.00
4.00	ALLE.PMSA24 MOUN,POLESTAR,24"SUPPORT ARM,S	184.29	737.14
2.00	ALLE.PM-DA.36 ADAP,POLE MOUNT,DUAL,36"	222.86	445.71
6.00	ALLE.PM-BAND-60 ACCE,STNLS BAND KIT 60" W/CLAM	240.00	1,440.00
6.00	ALLEN PM MOUNT 6 UP POLE MOUNT	308.57	1,851.43
		Sub Total	14,650.28

## LANDSCAPE SPEAKERS

Quantity	Description	Price	Extension
9.00	SOUN.XT850-GN SPEA, 8" OUTDOOR	394.16	3,547.41
		Sub Total	3,547.41

## AMPLIFIERS

Quantity	Description	Price	Extension
1.00	QSC.CX1102 AMP,700W,8 OHM	1,949.94	1,949.94
1.00	QSC.CX702 AMP,425W,8 OHM	1,474.34	1,474.34
1.00	QSC.CX602V AMP,70V,440/550W,8 OHM	1,474.34	1,474.34
		Sub Total	4,898.62

## SIGNAL PROCESSING

Quantity	Description	Price	Extension
1.00	BSS.BLU-100 AV,12 ANALOG MIC/LINE INPUT	2,135.00	2,135.00
		Sub Total	2,135.00

## SOLID STATE RECORDER/PLAYER

Quantity	Description	Price	Extension
1.00	TASC.SS-CDR1 RECO,SNGL RACKSPC COMPAC FLASH	1,228.56	1,228.56
1.00	TASC.HD-R1 RECO,1RACKSPC,2CH SOLID STATE	1,228.56	1,228.56
1.00	TOA.MB-WT3 RACK,MOUNT KIT FOR WT5800	40.21	40.21
1.00	TOA.AD-246 POWE,AC,SUPPLY	44.93	44.93
1.00	TOA.EV-20RUS DIGI,DIGITAL MESSAGE REPEATER	635.93	635.93
		Sub Total	3,178.19

## TELEPHONE INTERFACE

Quantity	Description	Price	Extension
1.00	BOGE.UTI1 AV,TELEPHONE INTERFACE	298.00	298.00
1.00	CABLES, CONNECTORS, HDWR	71.43	71.43
		Sub Total	369.43

## CONTROL PROCESSOR

Quantity	Description	Price	Extension
1.00	CRES.CP2E AV,CONTROL,SYSTEM,W/ETHERNET	1,285.71	1,285.71
1.00	CRES.PW-2420RU POWE,PK,24VDC,2.0A/REG UNIV	178.57	178.57
1.00	CRES.TPS-4LB DISP.TOU,TOUCHPANEL,ISYS 3.6"	892.86	892.86
1.00	CUSTOM RACK PANEL FOR TP	71.43	71.43
1.00	ROUTER INTFC	178.57	178.57
Sub Total			2,607.14

## RACKS HARDWARE CABLE CONNECTOR

Quantity	Description	Price	Extension
10,000.00	WEST.C210 WIRE,2C,#10,PVC,TWISTED	.92	9,230.00
4,000.00	WEST.AQ227 WIRE,1PR,12,AWG,AQUASEAL	.62	2,500.00
200.00	BELD.YR15382 WIRE,1PR,#22,SH,PRETIN,MIC,JKT	.13	27.60
1.00	CONNECTORS/HARDWARE	857.14	857.14
1.00	MIDD.DWR-FK22 FAN,2 QTY 4 1/2" FANS,GUARDS &	61.51	61.51
1.00	RACK HARDWARE	142.85	142.86
1.00	MIDD.DWR2422 RACK,24 SPACE (42") SECTIONAL	729.98	729.99
1.00	MIDD.VFD24 RACK,VNTD FRNT DOOR,FITS 24 SP	214.64	214.64
1.00	MIDDLE ATLANTIC UPS-100R-1P	1,034.28	1,034.29
1.00	LINK.SRW2008MP SWIT,8PT,MGD,POE,2GB	430.52	430.53
Sub Total			15,228.56

## INSTALLATION SERVICES

Quantity	Description	Price	Extension
	LABOR	27,268.06	27,268.06
Sub Total			27,268.06
Merchandise:			46,614.63
Labor:			27,268.06
Freight:			.00
Sales Tax:			.00
Total Amount:			73,882.69

E. COST SUMMARY AND TERMS

PROPOSED TOTAL: \$73,882.69

LABOR: Includes project management, project engineering, assembly, travel, installation, system testing, training, and warranty.

TERMS:

1. 25% deposit (due upon signing of this agreement)
2. 25% equipment order
3. 25% upon beginning of installation
4. 20% upon substantial completion (date of first beneficial use)
5. 5% upon final completion

All invoices are due Net 30.

CC: Unless otherwise prohibited by law, a 3% convenience fee will be charged for using a credit card.

PRICE: The price stated above for this project is based upon the complete system being purchased and installed at one time. In the event the Customer selects to purchase less than the total project, delays purchase of any portion of the system, requires that the system be installed in phases, or delays the installation, Ford AV reserves the right to charge for additional labor, travel, and overhead. The price is valid for 30 days from the date of this proposal.

COMMENCEMENT OF WORK:

Ford AV must receive the signed contract and down payment prior to the contract being initiated by Ford AV. Without the signed contract and down payment being received by Ford AV, no work on the contract will be taken, including engineering the system, purchasing the equipment and scheduling the work crews for installation. In the event the Customer fails to pay Ford AV within the terms above, Ford AV reserves the right to stop work on the project until all payments are received by Ford AV in accordance with the terms.

CREDIT: This proposal shall not be deemed as accepted by Ford AV until the executed contract is returned to Ford AV's credit center for final review and acceptance.

CHANGES: Any Customer Change Orders (CCO) must be approved in writing by the customer prior to execution by Ford AV and are subject to the credit terms of this agreement.

## F. PREVENTATIVE MAINTENANCE PROGRAM

1. Ford AV will perform two (2) semi-annual pre-scheduled service calls for the purpose of conducting routine preventative maintenance (PM) to check the general operation of equipment. Each PM service call will be scheduled in advance with the Customer and does not include expendable materials used (e.g. light bulbs, lamps, light fixture lamps, fuses, batteries, portable connection cables, etc.) or system programming. 24-hour phone support is included in this program.
2. Customer shall provide a contact person that is authorized to answer questions and obligate the Customer if additional services are requested. The contact shall be personally available to meet with the Ford AV technician and have knowledge of the equipment and systems to be inspected. The contact person shall provide access to all areas and equipment rooms requiring inspection.

WATERWALK PREVENTATIVE  
MAINTENANCE PROGRAM: \$2,210.00

COUNCIL CHAMBERS PREVENTATIVE  
MAINTENANCE PROGRAM: \$1,500.00\*

\* Price valid when purchased with the WaterWalk preventative maintenance program.

## G. GUARANTEES AND LIMITATIONS OF WARRANTIES

1. FORD AV GUARANTEES THE FOLLOWING:
  - a. Equipment will be new, unless noted otherwise.
  - b. All workmanship provided by Ford AV will be free of deficiencies and defects, and will be repaired, free of charge, for a period one year from the date of substantial completion or the first date of beneficial use of the system, whichever date occurs first. Substantial completion shall be defined as the point where the work or designated portion thereof, is sufficiently complete so that the system can be used for its intended purpose.
  - c. All equipment and materials provided by Ford AV that were manufactured by other companies will be warranted under the standard warranty terms of the original manufacturer.
  - d. If any questions arise now or in the future about the installation or operation of the system, a Ford AV engineer will be available to assist and answer any questions by phone.
  - e. The warranty does not include, nor cover expendable materials used with the system installation (e.g. light bulbs, lamps, light fixture lamps, fuses, batteries, portable connection cables, etc.).
  - f. Any adjustments made by the Customer or the Customer's agent(s), other than routine operational adjustments, shall not be covered under this warranty statement. Re-calibration of settings shall be considered by Ford AV to be billable time to the Customer at Ford AV's standard engineering rates.



- g. Procedures such as routine preventative maintenance functions (e.g. keeping filters clean, keeping system environment free from foreign materials, etc.) is the responsibility of the Customer and is not included within this warranty agreement. Failure on the part of the Customer to perform these routine maintenance functions shall void this warranty.
- h. If warranty work is necessary within the warranty period, Ford AV will, at its option, repair the defective equipment or return it to Ford AV's service center for repair.
- i. Repairs, modifications, or other work performed by personnel not authorized by Ford AV during the period of warranty on any equipment of the system may invalidate the warranty.
- j. Ford AV will not be responsible for damages, or cost of repairs due to modifications, adjustments, or additions to the system performed by personnel not authorized by Ford AV prior to acceptance of the system by the Customer.
- k. Ford AV may withhold warranty service in the event that the Customer has an unpaid balance due to be paid to Ford AV.

2. OWNER FURNISHED EQUIPMENT (OFE):

- a. Ford AV shall provide a complete system, which includes providing all the equipment as required to interface with the Waltzing Waters equipment and the security system equipment, both of which are to be supplied by others, as necessary to install a complete functioning system.

H. TRAINING AND DOCUMENTATION

1. STANDARD TRAINING INCLUDED:

- a. Ford AV agrees to conduct a training session at the completion of installation. All system operators or interested persons should attend this training so that all questions can be answered during this period.
- b. Ford AV personnel will assist and supervise Customer personnel in a run-through to acquaint them with "hands on" operation of equipment.
- c. All audio/video wiring will be numbered and labeled. The system diagram will include the wire numbers.
- d. A binder with system diagrams and equipment manuals will be furnished at no cost.

2. CUSTOMIZED TRAINING - OPTIONAL:

Ford AV is committed to training our customers. In addition to the standard training included with each job, our customer training program offers multiple, customizable options to fit the needs of any customer. The possible programs include:

- a. The standard program, which comes with all Ford AV jobs.

- 1) This includes owner's manuals, labeled as-built drawings, and an on-site training session.
- 2) The on-site training can be video-taped, at an additional cost.
- b. The advanced training program, which is at an additional cost.
  - 1) This program provides more in-depth training. In addition to the written materials that come standard, Ford AV shall furnish an operation guide, which includes specific how-to-use instructions and troubleshooting tips.
  - 2) It also includes the standard on-site training, but with a video-tape of the session, with minimal editing.
- c. The customized training program is determined by the customer, salesperson and Ford AV Training Coordinator to best meet the needs of the customer. The cost is based on the desired program. It can include:
  - 1) The standard written documentation, with a detailed operation guide.
  - 2) PowerPoint presentations, either basic or detailed, providing a simple or in-depth overview of the system and its functionality. The customer shall be given a digital copy to keep.
  - 3) The customer may choose to capture the on-site training portion on video tape. A standard camcorder on a tripod, with or without an operator, is available. Ford AV also offers a 3-camera video production system, with video switching and multiple operators.
  - 4) Additional materials include HTML format documents or additional paper copies or CDs/DVDs/VHS. The additional copies would come at an additional price.
- d. Please contact Ford AV to receive a customized price quote on a customized training option.

### 3. TRAINING SEMINARS:

It is important that you receive the maximum value and use of your installed systems for many years. These systems are technical in nature and, as a result, formalized training is fundamental to ensuring that your staff is capable of fully using the systems.

We know the importance that training can make; therefore, each year, Ford AV provides a series of Customer Training Seminars. These seminars are held in various cities to encourage customers to enhance their knowledge and use of audio, video and lighting system equipment. The training sessions will permit your users to meet directly with Ford AV engineers and training personnel to provide theory and hands-on training. Seminars are held on the following topics: a) Sound Mixing, b) Mic'ing Techniques, c) Video Projection, d) Video Production, and e) Lighting Systems.

By choosing Ford AV to provide and install your system, your organization will receive from one to ten seminar voucher(s) based upon the purchase price of the system. Each voucher entitles one person to attend one seminar.

Please visit [www.fordav.com](http://www.fordav.com) for the latest calendar and seminar news. If you have any questions, or wish to register for a seminar, please call (405) 946-9966, or email [seminars@fordav.com](mailto:seminars@fordav.com).

## I. BUILDING CONSTRUCTION, SYSTEM INSTALLATION, AND RESPONSIBILITIES

### 1. VISUAL INSPECTION:

- a. This proposal is based upon a visual inspection of the site conditions. It is agreed that some buildings may have inherent design and/or construction that is not visibly recognizable and is outside of normal standard and customary building procedures. If the walls, floors or ceiling are found to be constructed in a manner that wire cannot be pulled or equipment cannot be mounted or otherwise installed without labor or materials in excess of those anticipated by both parties and proposed herein, the customer agrees to be responsible for any adjustments in the labor and materials required to perform the installation.

### 2. EXISTING CONDITIONS:

#### a. Acoustics and Noise

In facilities where Ford AV is providing a sound or audio system, the Customer is responsible for providing an environment free of ambient noise and excessive reverberation and echoes.

- 1) Typically, ambient noise is created by HVAC systems (Heating, Ventilation, and Air Conditioning), plumbing or other mechanical systems in the building. In general, Ford AV recommends that the ambient noise sound pressure level not exceed NC35 (Noise Criteria) or 35 dB A scale.
- 2) Long reverberation times and echoes are normally the result of hard wall, floor, and ceiling surfaces found in some rooms. Typically, Ford AV recommends that the reverb time does not exceed 1.5 seconds where the primary use is the communication of speech. The production of other types of music may require longer reverberation times. In the event that echoes exist, absorptive or diffusive wall and ceiling panels may be required to eliminate or minimize the detrimental effects of the echoes.
- 3) Ford AV is not responsible for any costs related to reducing the ambient noise or modifying the acoustics of the Customer's facilities.

### 3. THE CUSTOMER SHALL BE RESPONSIBLE FOR:

- a. The Customer shall have a representative (one person selected by the Customer) available throughout the installation to make decisions on behalf of the Customer concerning the installation. The purpose is to ensure that communication between the Customer and Ford

AV is accurate and responsive in the event of questions or problems that may arise during installation.

- b. The Customer shall clear the facility, auditorium, or other rooms involved in the installation of all activities during the periods of installation. Ford AV will work with the Customer to schedule the installation. Hours or days of work lost by the installation crew due to the inability to work as planned will be charged to the Customer based on the extra labor and expenses required.
- c. The Customer shall provide a facility that is prepared for the installation of electronic equipment. This includes a clean, dust free and air conditioned environment that is secure and quiet. The customer is responsible for providing a secure job site and for the cost of loss or damage to audio, video, and lighting equipment delivered by Ford AV to the job site.
- d. Electrical AC Power:  
  
In the event that AC electrical power is required to be installed or conduit systems are required to support the audio/video systems, it is the responsibility of the Customer, at their expense, to provide complete and adequate electrical power.
- e. Providing and preparing adequate space for the location of equipment, speakers, speaker clusters, subwoofer cabinets, distributed under and over balcony speaker systems, stage monitor systems, equipment racks, control and mixing consoles, and equipment racks included in system. In the event floors are sloped or not level, the Customer is responsible for making the floor level under consoles and equipment racks.
- f. Providing a clear area with adequate ventilation and air conditioning that maintains a room temperature not exceeding 75 degrees Fahrenheit in all rooms that are occupied by sound/audio/video/lighting equipment racks. Sound, audio, video and lighting equipment produces heat which must be dissipated by ventilation or air conditioning. Prolonged operation at room temperatures above 75 degrees Fahrenheit will shorten the life of electronic equipment leading to premature failure of components.
- g. Ford AV is not licensed for and does not perform any AC electrical, carpentry, painting, masonry, or carpet laying work.

4. FORD AV SHALL BE RESPONSIBLE FOR:

- a. Providing line drawings for system
- b. Fabrication and installation of audio system
- c. Recommending required AC power and conduits, to be provided and installed by the electrical contractor, for the audio/control systems
- d. Installation of low voltage audio wiring for system
- e. Electronic testing of audio system

- f. Tuning of audio processors
- g. Training
- h. Warranty service
- i. Providing as-built drawings

J. ACCEPTANCE

1. Customer personnel will be notified by Ford AV upon completion of the installation.
2. Demonstration of system performance will be during the training session.
3. Participants at the performance demonstration shall include personnel representing Ford AV and personnel representing City of Wichita who are authorized to accept the system as complete and make final payment.

This proposal shall not be deemed as accepted by Ford AV until the executed contract is returned to Ford AV's credit department for final review and acceptance.

We appreciate the opportunity to work with you on this project. If you have any questions or need additional information, please contact me at 405-946-9966.

Sincerely,

FORD AUDIO-VIDEO SYSTEMS, INC.



Ronald C. Hoeberling  
Account Manager

Cell: 913-708-1908  
E-mail: hoebr@fordav.com  
Website: www.fordav.com

## SYSTEM INSTALLATION AGREEMENT

Between

CITY OF WICHITA

and

FORD AUDIO-VIDEO SYSTEMS, INC.

This is to signify that City of Wichita and Ford Audio-Video Systems, Inc. have entered into a contract, in the amount of \$73,882.69, for the purchase and installation of equipment and services described in the attached proposal.

WATERWALK PREVENTATIVE  
MAINTENANCE PROGRAM:

\$2,210.00

\_\_\_\_\_  
Customer Accepts

COUNCIL CHAMBERS PREVENTATIVE  
MAINTENANCE PROGRAM:

\$1,500.00\*

\_\_\_\_\_  
Customer Accepts


\* Price valid when purchased with the WaterWalk preventative maintenance program.

City of Wichita and Ford Audio-Video Systems, Inc., by and through their respective signatories to the agreement, each represent to the other that they are authorized to enter into this agreement.

We do both agree to abide by the terms and conditions of this agreement.

FORD AUDIO-VIDEO SYSTEMS, INC.

CITY OF WICHITA

  
\_\_\_\_\_  
Ronald C. Hoeberling  
Account Manager

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Scott D. Abbot  
Director of Sales

\_\_\_\_\_  
Printed Name and Title

4/6/2012  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Second Reading Ordinances for April 17, 2012 (first read on April 10, 2012)**

**A. Public Hearing on the Establishment of the Southfork Redevelopment District (Tax Increment Financing) (District III)**

ORDINANCE NO. 49-260

An Ordinance of the City of Wichita establishing the Southfork Redevelopment District.

**B. ZON2012-00005 – City zone change from SF-5 Single-Family Residential (“SF-5”) and Limited Commercial (“LC”) to GC General Commercial (“GC”) with Protective Overlay (“PO”) #267, generally located between Kellogg Street/US 54 and I-35 and west of 127th Street East (District II)**

ORDINANCE NO. 49-261

An ordinance changing the zoning classifications or districts of certain lands located in the City of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended.



City of Wichita  
City Council Meeting  
April 17, 2012

**TO:** Mayor and City Council

**SUBJECT:** ZON2012-00004 – City zone change from SF-5 Single-family Residential (“SF-5”) to LI Limited Industrial (“LI”) generally located between South Maize Road and South Tyler Road, along the north side of K-42. (District IV)

**INITIATED BY:** Metropolitan Area Planning Department

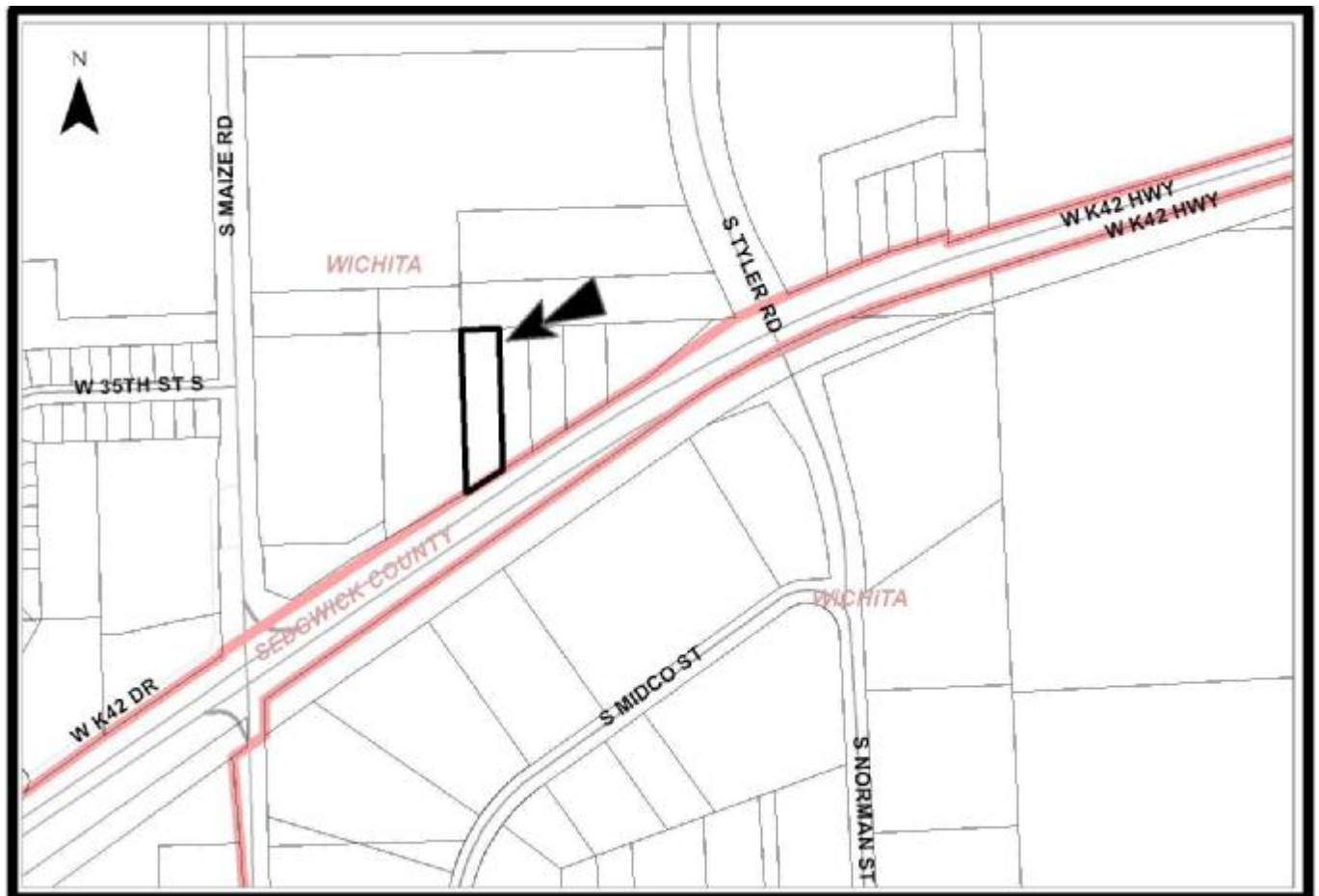
**AGENDA:** Planning (Consent)

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**MAPC Recommendation:** Approve, subject to platting within one year, vote (7-0-1)

**DAB IV Recommendation:** Approve, subject to platting within one year, vote (10-0)

**MAPD Staff Recommendation:** Approve, subject to platting within one year.



**Background:** The applicant requests a zone change from SF-5 Single-Family Residential (“SF-5”) to LI Limited Industrial (“LI”) on a 1.51-acre unplatted tract located 800 feet east of South Maize Road, along the north side of K-42. According to county records, the subject property is currently developed with a single-family residence; however, a site visit did not reveal any residential structures. Currently, there are structures accessory to the industrial use abutting the west side of the site.

The surrounding area is characterized primarily by industrial uses, although four single-family residences remain along K-42 east of the subject site on property zoned SF-5. The property north of the subject site is zoned LI, and is developed with a transit warehouse facility (Fed-Ex). Property south of the subject site, across K-42, is zoned LI, and is developed with a manufacturing operation. Property west of the subject site is zoned LI, and is developed with a plastic manufacturing facility.

Since the property east of the subject site is zoned SF-5, the Unified Zoning Code (“UZC”) screening, lighting and noise standards and the Landscape Ordinance landscaped street yard, parking lot landscaping and buffering requirements will apply. The UZC compatibility setback standards also apply unless a Zoning Adjustment is requested and granted by the Planning Director and Zoning Administrator to reduce or waive the compatibility setback.

**Analysis:** At the Metropolitan Area Planning Commission (MAPC) meeting held March 15, 2012, the MAPC voted (7-0-1) to recommend approval of the request. The case was approved by consent. There were not any commission members or citizens present to speak for or against the case.

On March 5, 2012, the District Advisory Board (DAB) IV heard the rezone request. The DAB voted (10-0) to approve the request. There were not any critical comments from the DAB or the public.

Staff did not receive any protests during the subsequent two-week protest period following the MAPC meeting.

**Financial Considerations:** Approval of this request will not create any financial obligations for the City.

**Goal Impact:** The application will promote Economic Vitality.

**Legal Considerations:** The ordinance has been reviewed and approved as to form by the Law Department.

**Recommendation/Actions:**

1. Adopt the findings of the MAPC and approve the zone change request, subject to platting within one year, authorize the Mayor to sign the ordinance and place the ordinance on first reading (simple majority required).

(An override of the Planning Commission’s recommendation requires a two-thirds majority vote of the City Council on the first hearing.)

**Attachments:**

- Ordinance
- MAPC Minutes
- DAB Memo

(150004) Published in The Wichita Eagle on April 27, 2012

ORDINANCE NO. 49-265

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY  
OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2012-00004

Zone change request from SF-5 Single-family Residential ("SF-5") to LI Limited Industrial ("LI"), subject to platting within one year, on property described as:

The East 128 feet of the West 898.75 feet of the Southwest quarter lying North of highway K-42 Section 8, Township 28, Range 1 West of the 6th P.M., Sedgwick County, Kansas. Generally located between South Maize Road and South Tyler Road, along the north side of K-42.

SECTION 2. That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this 24th day of April, 2012.

ATTEST:

\_\_\_\_\_  
Karen Sublett, City Clerk  
(SEAL)  
Approved as to form:

\_\_\_\_\_  
Carl Brewer, Mayor

Gary E. Rebenstorf, Director of Law



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INTEROFFICE MEMORANDUM

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**TO:** Wichita City Council  
MAPC Members

**FROM:** Kelli Glassman, Neighborhood Assistant, District IV

**SUBJECT:** ZON2012-00004

**DATE:** April 2, 2012

On Monday, March 5, 2012, the *District Advisory Board (DAB) for Council District 4* considered this request for a zone change from SF-5 Single-Family Residential ("SF-5") to LI Limited Industrial ("LI") on a 1.51-acre unplatted tract located 800 feet east of South Maize Road, along the north side of K-42. The subject property is currently developed with a single-family residence and other structures accessory to the industrial use abutting the west side of the site.

Planning staff was present, but there was no discussion on this item from the Board or public.

**DAB members voted 7-0 to recommend approval of the zone change request .**

Please review this information when this request is considered.

**EXCERPT MINUTES OF THE MARCH 15, 2012 WICHITA-SEDGWICK COUNTY  
METROPOLITAN AREA PLANNING COMMISSION HEARING**

**Case No.: ZON2012-04** - John Dugan (Owner/Applicant and K.E. Miller Engineering, PA c/o Kirk Miller (Agent) request a City zone change from SF-5 Single-Family Residential to LI Limited Industrial on property described as:

The East 128 feet of the West 898.75 feet of the Southwest quarter lying North of highway K-42 Section 8, Township 28, Range 1 West of the 6th P.M., Sedgwick County, Kansas.

**BACKGROUND:** The applicant requests a zone change from SF-5 Single-Family Residential ("SF-5") to LI Limited Industrial ("LI") on a 1.51-acre unplatted tract located 800 feet east of South Maize Road, along the north side of K-42. According to county records, the subject property is currently developed with a single-family residence; however a site visit did not reveal any residential structures. Currently, there are structures accessory to the industrial use abutting the west side of the site.

The surrounding area is characterized primarily by industrial uses, although four single-family residences remain along K-42 east of the subject site on property zoned SF-5. The property north of the subject site is zoned LI, and is developed with a transit warehouse facility (Fed-Ex). Property south of the subject site, across K-42, is zoned LI, and is developed with a manufacturing operation. Property west of the subject site is zoned LI, and is developed with a plastic manufacturing facility.

Since the property east of the subject site is zoned SF-5, the Unified Zoning Code ("UZC") screening, lighting, and noise standards and the Landscape Ordinance landscaped street yard, parking lot landscaping and buffering requirements will apply. The UZC compatibility setback standards also apply unless a Zoning Adjustment is requested and granted by the Planning Director and Zoning Administrator to reduce or waive the compatibility setback.

**CASE HISTORY:** The property is currently unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH:	LI	Transit warehouse
SOUTH:	LI	Machinery manufacturing
EAST:	SF-5	Single-family residential
WEST:	LI	Manufacturing

**PUBLIC SERVICES:** The subject property has frontage along K-42, a four-lane, divided expressway with 11,200 Average Daily Trips (ADTs) at this location. Public water and sewer service are currently available to the subject property.

**CONFORMANCE TO PLANS/POLICIES:** The "2030 Wichita Functional Land Use Guide, as amended May 2005" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "employment/industry center." The employment/industry center category encompasses areas with uses that constitute centers or concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices. This request is in conformance with the plan.

**RECOMMENDATION:** Based upon the information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject platting within one year.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The surrounding area is characterized primarily by industrial uses, although four single-family residences remain along K-42 east of the subject site on property zoned SF-5. The property north of the subject site is zoned LI, and is developed with a transit warehouse facility (Fed-Ex). Property south of the subject site, across K-42, is zoned LI, and is developed with a manufacturing operation. Property west of the subject site is zoned LI, and is developed with a plastic manufacturing facility.
2. **The suitability of the subject property for the uses to which it has been restricted:** The subject property is zoned SF-5 and is already being partially used for an industrial use. Given the long-standing guidance provided by land use guides that this area should be developed with industrial uses, further residential development of the subject property would not be suitable and would be contrary to the community's goal of converting the area from residential to industrial use.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Detrimental effects on remaining residential properties in the area are reduced by the screening, lighting, and compatibility standards of the Unified Zoning Code and the landscape street yard, parking lot screening, buffer landscaping requirements of the Landscape Ordinance. These ordinances help limit noise, lighting, and other activity from adversely impacting the surrounding residential properties.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The "2030 Wichita Functional Land Use Guide, as amended May 2005" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "employment/industry center. The Industrial Locational Guidelines of the Comprehensive Plan recommend that industrial uses be located in close proximity to support services such as major arterials, truck routes, highways, utilities trunk lines, rail spurs, and airports.
5. **Impact of the proposed development on community facilities:** Approval of the request should not have a negative impact on community facilities.

**MOTION:** To approve subject to staff recommendation.

DENNIS moved, MCKAY seconded the motion, and it carried (7-0-1). JOHNSON – Abstained.

City of Wichita  
City Council Meeting  
April 17, 2012

**TO:** Wichita Airport Authority

**SUBJECT:** Construction Related Services Contract  
Bombardier Learjet Parking Improvements  
Wichita Mid-Continent Airport

**INITIATED BY:** Department of Airports

**AGENDA:** Wichita Airport Authority (Consent)

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**Recommendation:** Approve the contract.

**Background:** Bombardier Learjet (Learjet) is expanding its production facilities in order to accommodate the new Learjet 85 aircraft production program, the creation of a new Center of Excellence for Engineering and Information Technology, and expansion of the Bombardier Flight Test Center. This expansion will use all available existing land on its site for construction of buildings and will displace existing employee parking lots. As part of this expansion project, the Wichita Airport Authority (WAA) will construct new parking lots on Airport land adjacent to the factory.

**Analysis:** During the development of the overall program, Learjet provided the parking lot design to the WAA to handle the construction. The construction contract has been awarded to APAC-Kansas through the Board of Bids process. Ruggles & Bohm was selected through the Staff Screening Selection process, as the most cost effective and experienced from the three proposals received, to provide construction related services.

**Financial Considerations:** The cost of the construction related services is \$148,785 and is within the current approved budget. The contract has the concurrence of the Economic Development Administration (EDA). The WAA serves as the grantee for the EDA grant in the amount of \$1,938,000, while the City of Wichita and Sedgwick County will each provide \$1,000,000 in matching funds as part of an incentive package offered to Learjet.

**Goal Impact:** The Airport's contribution to the Economic Vitality of Wichita is promoted through accommodating tenants and making improvements which will enhance facilities and assist with job creation for the community.

**Legal Considerations:** The Law Department has approved the construction related services contract as to form.

**Recommendations/Actions:** It is recommended that the Wichita Airport Authority approve the construction related services contract and authorize the necessary signatures.

**Attachments:** Contract.



CONTRACT  
for  
CONSULTING SERVICES  
between  
WICHITA AIRPORT AUTHORITY

and

RUGGLES & BOHM, P. A.

THIS CONTRACT, made this 26<sup>th</sup> day of March, 2012 by and between the WICHITA AIRPORT AUTHORITY, Wichita, Kansas, party of the first part, hereinafter called the "OWNER" and Ruggles & Bohm, P. A., 924 North Main, Wichita, Kansas, party of the second part, hereinafter called the "CONSULTANT".

WITNESSETH: That,

WHEREAS the OWNER is engaged in the operation of Wichita Mid-Continent Airport; and whereas it is the desire of both parties that the CONSULTANT furnish consulting services in conjunction with the construction of Woodchuck and Tyler Road Parking Lots (PROJECT); and whereas all of the aforesaid being located within the corporate limits of the City of Wichita, Sedgwick County, Kansas, and

WHEREAS, this Agreement and all subconsultant agreements shall be governed by the laws of the State of Kansas and

WHEREAS, the OWNER is authorized by law to employ a consultant to provide professional consulting services NOW, THEREFORE, the parties hereto do mutually agree as follows:

ARTICLE I - SCOPE OF SERVICES:

The Scope of Services to be performed by the CONSULTANT shall be as outlined in EXHIBIT A.

ARTICLE II - THE CONSULTANT AGREES:

- A. To provide the professional services, equipment, material and transportation to perform the tasks as outlined in Article I, SCOPE OF SERVICES.
- B. That this Agreement does not become effective until the OWNER receives a U. S. Economic Development Administration (EDA) grant for the identified work, and that unless such grant is offered by the agency, and accepted by the OWNER, the CONSULTANT is not entitled to compensation. Any material modification of the grant as offered from the grant application may be cause for re-negotiation of this Agreement.

- C. To designate a project manager who will coordinate all work and be the point of contact for communications and to submit qualifications of the proposed project manager to the OWNER in advance of the Notice to Proceed. The OWNER reserves the right to withhold the Notice to Proceed until a qualified project manager is designated. The OWNER shall concur with any changes to this assignment.
- C. To submit to the OWNER in a timely manner, editable, electronic files of all surveys and drawings in AutoCAD format and specifications in Microsoft Word, as is applicable for this project. Each submittal shall be in a single, organized file that mimics the plans and specifications.
- D. To save and hold OWNER harmless against all suits, claims, damages and losses for injuries to third parties or their property or to the OWNER and its property arising from or caused by negligent acts, errors or omissions of CONSULTANT, its agents, servants, employees, or subconsultants occurring in the performance of its services under this Agreement. This liability shall extend to consequential damages suffered by OWNER as a result of loss of revenue, loss of grant or other funding mechanisms, regulatory penalties, changes in construction requirements, or changes in regulatory compliance requirements.
- E. To maintain all books, documents, papers, accounting records, and to make such material available at the CONSULTANT'S office at reasonable times during the contract period, and for four years from the date of final payment under the Agreement, for inspection and/or duplication by the OWNER or authorized representatives.
- F. That the CONSULTANT shall not, on the grounds of race, color, sex, national origin, age or handicap, discriminate or permit discrimination in violation of any federal, state or local laws or of Part 21 of the regulations of the Office of the United States Department of Transportation (49 CFR 21). The CONSULTANT, in performing the work or services required pursuant to this Agreement, shall not participate either directly or indirectly in discriminations prohibited by the non-discrimination requirements of the City of Wichita, Kansas, as set out in EXHIBIT B. The OWNER reserves the right to take such action as the United States Government or any state or local government may direct to enforce this covenant.

The CONSULTANT assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The CONSULTANT assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The CONSULTANT assures that it will require that their covered suborganizations provide assurances to the OWNER that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

- G. To accept compensation for the work herein described in such amounts and at such periods as hereinafter provided and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work described in EXHIBIT A.

- H. To submit billings to the OWNER for the Services performed as required by this Agreement. Billings shall not exceed progress of work as evidenced by deliverables submitted by the CONSULTANT and approved by the OWNER. During the progress of work covered by the Agreement, partial payment requests may be made at intervals of not less than four weeks. The progress billings shall be supported by documentation acceptable to the OWNER, which shall include a record of the percentage completion evidenced by approved deliverables, of the number of days allocated for completion of the work, the number of days that have elapsed, and the number of days that remain to complete the work. Progress billings shall also include copies of subconsultant invoices to the CONSULTANT for the same billing period. Payment to subconsultants, for satisfactory performance shall be made within 30 days of receipt of payment and no retainage shall be withheld. Any delay or postponement of payment from the referenced time frame may occur only for good cause and following written approval of the OWNER.
- I. To covenant and represent to be responsible for the professional and technical accuracy and the coordination of all drawings or other work or material furnished by the CONSULTANT under this Agreement.

CONSULTANT further agrees, covenants and represents that Services furnished by CONSULTANT, its agents, employees and subconsultants under this Agreement shall be free from negligent errors or omissions.

- J. To procure and maintain such professional liability insurance as will protect the CONSULTANT from damages resulting from negligent acts and/or omissions of the CONSULTANT, its agents, officers, employees and subconsultants in an amount not less than \$3,000,000 per claim, with tail coverage extending for 3 years after project completion, subject to deductible of the greater of \$10,000 or such amount that the CONSULTANT can demonstrate to OWNER'S satisfaction is financially prudent. The CONSULTANT shall be responsible for payment of all deductible amounts without reimbursement by OWNER. In addition, a Worker's Compensation policy with coverage amounts sufficient to meet statutory requirements shall be provided and maintained. This policy shall contain an "all-states" endorsement. In addition, an Employers Liability policy with coverage in the sum of not less than \$1,000,000 shall be provided and maintained. This policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Worker's Compensation Law.

Further, a comprehensive general liability policy shall be procured and maintained by the CONSULTANT for the duration of the Project that shall be written in a comprehensive form and shall protect CONSULTANT against all claims arising from injuries to persons (other than CONSULTANT'S employees) or damage to property of the OWNER or others arising out of any negligent act or omission of CONSULTANT, its agents, officers, employees, or subconsultants in the performance of CONSULTANT services under this Agreement. The liability limit shall not be less than \$1,000,000 per occurrence for bodily injury, death and property damage. The Wichita Airport Authority, Wichita, Kansas; the City of Wichita; their officers, employees and agents shall be named as additional insureds under the terms of the policy with respect to the names insurer's operations. Satisfactory Certificates of Insurance shall be filed with the OWNER prior to the time CONSULTANT starts any work under this Agreement. The CONSULTANT shall maintain such insurance through the duration of

the Project. In addition, insurance policies applicable hereto shall contain a provision that provides that the OWNER shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or cancelled.

- K. Its agents, employees and subcontractors, shall be subject to any and all applicable rules, regulations, orders and restrictions which are now in effect and which apply to its activities on Airport property, including such rules, regulations, orders and/or restrictions that may be adopted, enacted or amended during the term of this Agreement.
- L. The CONSULTANT and the OWNER shall not be obligated to resolve any claim or dispute related to this Agreement by arbitration. Any reference to arbitration in any proposal or contract documents is deemed void.
- M. That all information provided by the OWNER and/or developed for the PROJECT shall be considered confidential and proprietary, and shall not be reproduced, transmitted, used or disclosed by the CONSULTANT without the written consent of OWNER, except as may be necessary for the non-disclosing party to fulfill its obligations hereunder; provided, however, that the limitation shall not apply to any information or portion thereof, which is:
  - 1. Within the public domain at the time of its disclosure.
  - 2. Required to be disclosed by a court of competent jurisdiction or Government order.
  - 3. Approved by the OWNER for publicity.
  - 4. Required to be communicated in connection with filings with governmental bodies having jurisdiction over the design or construction of the PROJECT.
- N. To abide by the Federal Provisions in EXHIBIT D.

#### ARTICLE III - THE OWNER AGREES:

- A. To furnish all available data pertaining to the PROJECT available to the OWNER. All data shall be considered confidential unless otherwise noted.
- B. To provide standards, as available, for the PROJECT.
- C. To pay the CONSULTANT for services in accordance with the requirements of this Agreement within thirty (30) working days from the date of receipt of invoice and upon satisfactory performance of service.
- D. To provide the right of entry into secured areas for CONSULTANT'S personnel, subject to all rules and regulations of the OWNER, the Transportation Security Administration and Federal Aviation Administration regarding airfield safety and security.
- E. To pay all applicable design phase fees, unless otherwise stated herein.

- F. To indemnify and hold the CONSULTANT harmless against OWNER'S negligent acts and errors.

#### ARTICLE IV - PAYMENT PROVISIONS:

- A. Payment to the CONSULTANT for performance of the specified services shall be as described hereinafter.
  - 1. Payment to the CONSULTANT for the performance of the professional services shall be on an hourly rate basis for a not-to-exceed amount of \$148,784.31. (EXHIBIT E)
- B. During the course of the Agreement any scope changes anticipated or detected by the CONSULTANT shall immediately, and in writing, be brought to the attention of the OWNER along with an estimate of actual costs and impact to the schedule. The CONSULTANT shall give the OWNER the opportunity to mitigate any and/or all impacts of the proposed scope changes. For potential scope changes initiated by the OWNER, the OWNER shall provide to the CONSULTANT, in writing, the known details of the proposed scope change and the CONSULTANT shall proceed to provide a timely response. In no case shall additional work be performed nor shall additional compensation be paid except on the basis of an executed supplemental agreement.
- C. Final payment shall not occur until all work is complete and approved by the OWNER.

#### ARTICLE V - THE PARTIES HERETO MUTUALLY AGREE:

##### A. TERMINATION OF CONTRACT

- 1. That the right is reserved to the OWNER to terminate this Agreement or any portion of phase of this Agreement at any time, upon written notice, in the event the PROJECT is to be abandoned; PROVIDED, however, that in such case the CONSULTANT shall be paid the reasonable value of the Services rendered up to the time of termination on the basis of the provisions of this Agreement, but in no case shall payment be more than the CONSULTANT'S actual costs plus a reasonable sum for profit. Upon receipt of such notice, Services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this Agreement, whether completed or in progress, delivered to the OWNER and become the possession of the OWNER.
- 2. Any violation or breach of the terms of this Agreement on the part of the CONSULTANT or subconsultant(s) may result in the suspension or termination of this Agreement or such other action, which may be necessary to enforce the rights of the parties of this Agreement. In such case, the OWNER may take possession of all materials as may have been accumulated in performing this Agreement, whether completed or in progress and take over the work and prosecute the same to completion, by separate agreement or otherwise, for the account and at the expense of the CONSULTANT. The CONSULTANT shall be liable to the OWNER for those costs associated with the remedy of the breach of terms.

3. The rights and remedies of the OWNER provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.
- 
- B. That the specifications, plans and other deliverables shall become the property of the OWNER upon delivery or termination of the Services in accordance with this Agreement. The OWNER shall not hold the CONSULTANT and subconsultants liable upon the OWNER'S reuse of any part of deliverables, and there shall be no restriction or limitation on their further use by the OWNER. Consultant's seal and name shall not be reproduced on such documents if reused by the OWNER.
  - C. That the services to be performed by the CONSULTANT under the terms of this Agreement are personal and cannot be assigned, sublet or transferred without specific consent of the OWNER.
  - D. In the event of unavoidable delays in the progress of the work, reasonable extensions in the time will be granted by the OWNER, provided, however, that the CONSULTANT shall request extensions in writing giving the reason therefore.
  - E. Unless otherwise provided in this Agreement, the CONSULTANT and agents, servants, employees, or subconsultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.
  - F. It is further agreed that this Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the parties hereto and their successors and assigns.
  - G. For good cause, and as consideration for executing this Agreement, the CONSULTANT, acting herein by and through its authorized agent, hereby conveys, sells, assigns, and transfers to the OWNER all right, title, and interest in and to all causes of action it may now or hereafter require under the anti-trust laws of the United States and the State of Kansas, relating to the particular product, products, or services purchased or acquired by the OWNER pursuant to this Agreement.
  - H. Neither the OWNER'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the CONSULTANT under this Agreement shall be construed to operate as a waiver of any right under this Agreement or any cause of action arising out of the performance of this Agreement.
  - I. It is specifically agreed between the parties executing this Agreement, that it is not intended by any of the provisions of any part of this Agreement to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for damage pursuant to the terms of provisions of this Agreement.
  - J. The CONSULTANT hereby certifies that:
    1. The CONSULTANT has not employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than

a bona fide employee working solely for the CONSULTANT) to solicit or secure this Agreement.

2. The CONSULTANT has not agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement.
3. The CONSULTANT has not paid or agreed to pay to any firm, organization, or person (other than a bona fide employee working solely for the CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement, except as here expressly stated (if any).
4. By acceptance of this Agreement that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this Agreement that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the CONSULTANT or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this Agreement.

IN WITNESS WHEREOF, the OWNER and the CONSULTANT have executed this Agreement as of the date first written above.

ATTEST:

WICHITA AIRPORT AUTHORITY  
WICHITA, KANSAS

By: \_\_\_\_\_  
Karen Sublett, City Clerk

By: \_\_\_\_\_  
Carl Brewer, President  
"OWNER"

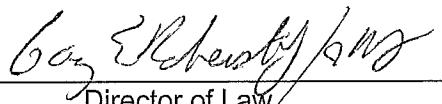
By:  \_\_\_\_\_  
Victor D. White, Director of Airports

ATTEST:

Ruggles & Bohm, P. A.  
924 North Main  
Wichita, Kansas 67203

By:  \_\_\_\_\_

Title: UP of Landscape Architecture  
"CONSULTANT"

APPROVED AS TO FORM:  \_\_\_\_\_ Date: 3-28-12  
Director of Law

ATTACHMENTS: EXHIBIT A – Scope of Services  
EXHIBIT B – City/State Equal Employment Opportunity  
EXHIBIT C1, C2 and C3 – Maps  
EXHIBIT D – Federal Clauses  
EXHIBIT E – Fee Schedule



## SCOPE OF SERVICES

(March 23, 2012)

- A. CONSULTANT shall provide Contract Administration and Construction Observation Services for the Project.
1. Project Manager shall be a registered Professional Engineer with experience relevant to this project.
  2. The Resident Project Representatives shall be professional engineers, engineering technicians, or experienced craftsman with qualifications in the appropriate field equivalent to NICET Level II or higher construction materials technician or highway construction technician and shall have a minimum of two (2) years of experience relevant to this project.
- B. CONTRACT ADMINISTRATION duties shall be the responsibility of Project Manager and these duties shall include but are not limited to:
1. Supervise the Resident Project Representatives.
  2. Facilitate the pre-construction conference.
  3. Perform shop drawing reviews.
  4. Take minutes of all meetings such as: pre-construction, weekly progress, as well as any other meetings. Minutes shall be distributed within five calendar days of meeting.
  5. Prepare pay estimates for periodic and final payments to the Contractor.
  6. Make periodic visits to the project site to determine Contractor's progress and general character of the work.
  7. Review and evaluate change order and/or supplemental agreement requests for cost and time and make recommendations to the Owner.

8. Review and evaluate contractor claims and provide recommendation to Owner.
9. Monitor compliance with approved safety and phasing plans and review initial submittals and proposed changes.
10. Conduct interim and final inspections of the work, prepare all punch lists and monitor construction activities to insure the corrective is correctly completed.
11. Issue Certificate of Completion when the PROJECT has been completed.
12. Meet with OWNER, as requested, during project.
13. Insure closeout documents are provided by the Contractor.

C. CONSTRUCTION OBSERVATION duties shall be the responsibility of Resident Project Representatives and these duties shall include but are not limited to:

1. Perform observation of all construction including acceptance testing of construction materials to determine compliance with the contract documents. The CONSULTANT will endeavor to provide further protection for OWNER against defects and deficiencies in the work; but the furnishing of such Resident Project Representation shall not make CONSULTANT responsible for Contractor's failure to perform the construction work in accordance with the contract documents.
2. Maintain daily diary that documents work and other project activities. Daily documentation shall include:
  - i. Weather conditions
  - ii. Work in process and general location
  - iii. Equipment used
  - iv. Hours worked for contractor, subcontractor, testing laboratory and resident project representative
  - v. Quality and quantity of materials delivered
  - vi. Tests performed, locations and any deviation from the contract documents and corrective action taken
  - vii. Instructions to the Contractor
  - viii. Rejected work and corrective action taken
  - ix. Unsafe or unexpected hazardous conditions encountered

- x. Revisions to plans and specifications approved or denied, delays, difficulties, and actions taken
  - xi. Document contractor activities regarding force account work as defined in the contract documents
  - xii. Site visitors
- 3. Monitor contractor compliance with approved safety and phasing plans
- 4. Maintain a field set of plans (red line drawings) showing changes made during construction
- 5. Assist the Project Manager with measured quantities for pay requests

## II. EXCLUSIONS

- A. Materials testing
- B. Storm water sewer video recording and log.
- C. Water quality testing.
- D. Storm Water Pollution Prevention Plan inspection.
- E. Construction staking and spot checking
- G. Documentation, Testing, Inspection, and Certification to satisfy the City of Wichita Private Project requirements.
- H. Review and evaluation of Certified Payrolls, comparison with Labor Standards Interviews, or compliance review of same.

**REVISED NON-DISCRIMINATION AND  
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM  
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
  - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
  - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
  - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
  - 5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

PROJECT  
LOCATIONS

LOCATION MAP			
WICHITA MID-CENTRINT AIRPORT			
THE WICHITA AIRPORT AUTHORITY			
WICHITA, KANSAS			
DATE	DR. BY	SCALE	SHEET
12/16/11	H.G.O.	1" = 1900'	1 of 1

# EXHIBIT C2

HARRY STREET

TYLER ROAD

W  
A  
A

1711 STALLS

RPZ

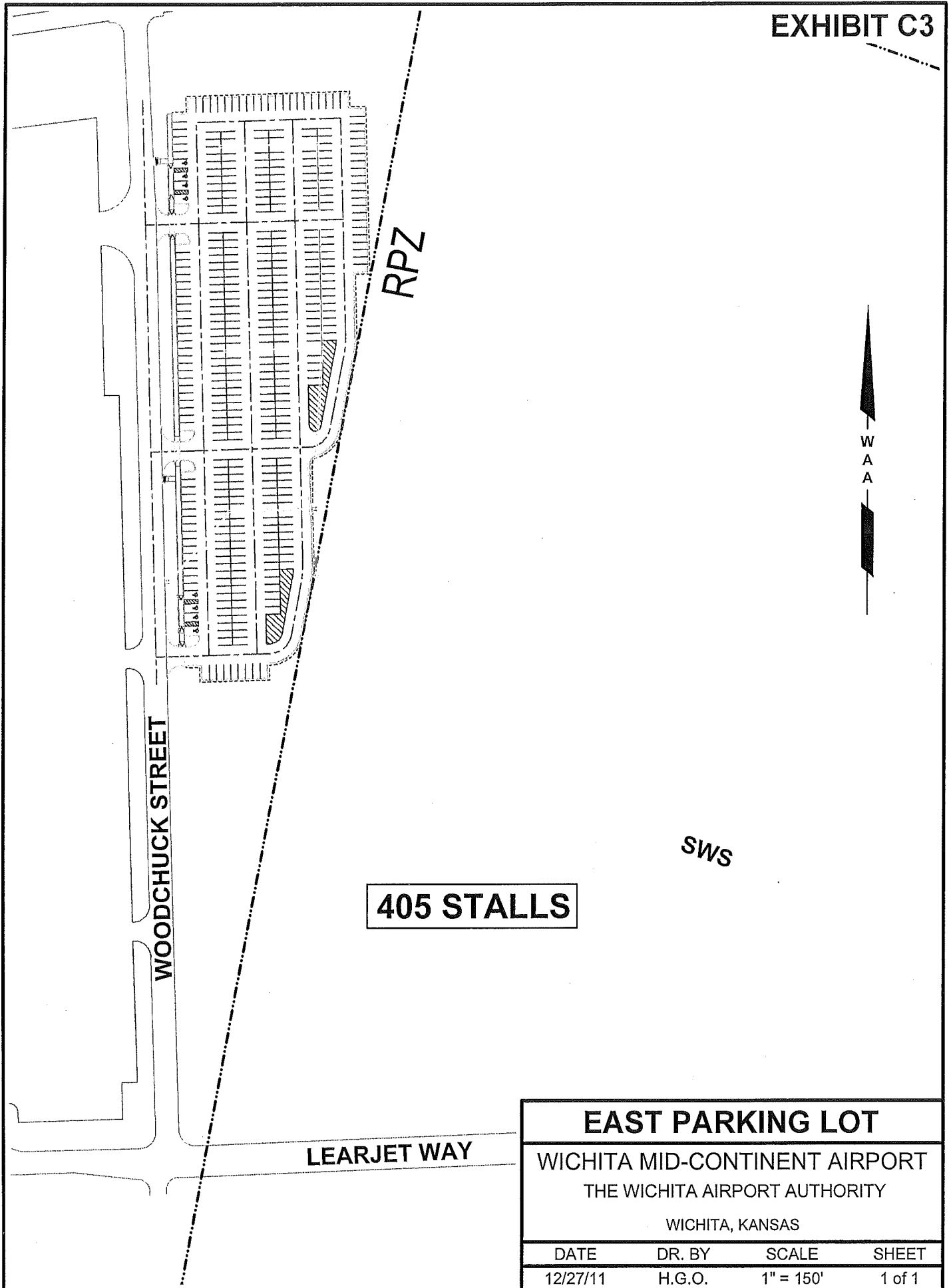
## WEST PARKING LOT

WICHITA MID-CONTINENT AIRPORT  
THE WICHITA AIRPORT AUTHORITY

WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
12/27/11	H.G.O.	1" = 150'	1 of 1





## Required Federal Clauses

(October 11, 2011)

1. **ENERGY EFFICIENCY** - The Consultant shall comply with all standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public L. No. 94-163) for the State in which the Work under the Contract is performed.
2. **REQUIRED PROVISIONS DEEMED INSERTED** - Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion of correction.
3. **INSPECTION BY EDA REPRESENTATIVES** - The authorized representatives and agents of EDA shall be permitted to inspect all work, materials, payrolls, personnel records, invoices of materials, and other relevant data and records.
4. **EXAMINATION AND RETENTION OF CONSULTANT'S RECORDS**
  - (a) The Owner, EDA, or the Comptroller General of the United States, or any of their duly authorized representatives shall, generally until three years after final payment under this Contract, have access to and the right to examine any of the Consultant's directly pertinent books, documents, papers, or other records involving transactions related to this Contract for the purpose of making audit, examination, excerpts, and transcriptions.
  - (b) The Consultant agrees to include in first-tier subcontracts under this Contract a clause substantially the same as Paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders that do not exceed \$10,000.
  - (c) The periods of access and examination in Paragraphs (a) and (b) above for records relating to (1) appeals under the disputes clause of this Contract, (2) litigation or settlement of claims arising from the performance of this Contract, or (3) costs and expenses of this contract to which the Owner, EDA, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.
5. **PATENT FEES AND ROYALTIES**
  - (a) Consultant shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work (as set out in the Scope of Services, Ex. A) or the incorporation in the Work of any invention, design, process, product, or device that is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or

Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the Owner in the Contract Documents.

- (b) To the fullest extent permitted by Laws and Regulations, the Consultant shall indemnify and hold harmless the Owner and the Consultant, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

- 6. **CLAIMS FOR EXTRA COSTS** - No claims for extra work or cost shall be allowed unless the same was done in pursuance of a written order approved by the Owner.
- 7. **LABOR STANDARDS - DAVIS-BACON AND RELATED ACTS (as required by Section 601 of PWEDA)**

**(a) Minimum Wages**

- (1) All laborers and mechanics employed or working upon the site of the Work in the construction or development of the Project will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act at 29 CFR Part 3, the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor, which is attached hereto and made a part hereof, regardless of any contractual relationship that may be alleged to exist between the Consultant and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR § 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates determined under 29 CFR § 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Consultant and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (2) (i) Any class of laborers or mechanics to be employed under the Contract, but not listed in the wage determination, shall be classified in conformance with the wage determination. EDA shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (A) The work to be performed by the classification requested is not performed by a classification in the wage determination;
  - (B) The classification is utilized in the area by the construction industry; and
  - (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) If the Consultant and the laborers and mechanics to be employed in the classification (if known), or their representatives, and EDA or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by EDA or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.
- (iii) In the event the Consultant, the laborers or mechanics to be employed in the classification or their representatives, and EDA or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), EDA or its designee shall refer the questions, including the views of all interested parties and the recommendation of EDA or its designee, to the Administrator for determination.
- (iv) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(2)(ii) or (iii) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (3) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Consultant shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof. (4) If the Consultant does not make payments to a trustee or other third person, the Consultant may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Consultant, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Consultant to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (b) **Withholding** - EDA or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be

withheld from the Consultant under this Contract or any other federal contract with the same prime Consultant, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Consultant so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the Consultant or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper employed or working on the site of the Work in the construction or development of the Project, all or part of the wages required by the Contract, EDA or its designee may, after written notice to the Consultant, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. EDA or its designee may, after written notice to the Consultant, disburse such amounts withheld for and on account of the Consultant or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**(c) Payrolls and basic records**

- (1) Payrolls and basic records relating thereto shall be maintained by the Consultant during the course of the Work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the Work in the construction or development of the Project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Consultant shall maintain records which show that the commitment to provide such benefits is enforceable, the plan or program is financially responsible, and the plan or program has been communicated in writing to the laborers or mechanics affected, and provide records that show the costs anticipated or the actual cost incurred in providing such benefits. Consultants employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (2) (i) For each week in which Contract work is performed, the Consultant shall submit a copy of all payrolls to the Owner for transmission to EDA or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose. It may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402; or downloaded from the U.S. Department of Labor's website at [www.dol.gov/esa/forms/whd/index.htm](http://www.dol.gov/esa/forms/whd/index.htm). The prime Consultant is responsible

for the submission of copies of payrolls by all subcontractors

- (ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Consultant or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

- (A) That the payroll for the payroll period contains the information required to be maintained under 29 C.F.R. § 5.5(a)(3)(i) and that such information is correct and complete;

- (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 C.F.R. Part 3;

- (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

- (iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by Paragraph 14(c)(ii) of this section.

- (iv) The falsification of any of the above certifications may subject the Consultant or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the U.S. Code.

- (3) The Consultant or subcontractor shall make the records required under Paragraph 14(c)(1) of this section available for inspection, copying, or transcription by authorized representatives of EDA or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Consultant or subcontractor fails to submit the required records or to make them available, EDA or its designee may, after written notice to the Consultant or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

**(d) Apprentices and Trainees.**

- (1) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State

Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Consultant as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Consultant is performing construction on a Project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Consultant's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Consultant will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (2) **Trainees.** Except as provided in 29 CFR § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program that has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman's hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not

less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Consultant will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (3) **Equal Employment Opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, *Equal Employment Opportunity*, as amended, and 29 CFR Part 30.
- (e) **Compliance with Copeland Anti-Kickback Act Requirements.** The Consultant shall comply with the Copeland Anti-Kickback Act (18 U.S.C. § 874 and 40 U.S.C. § 276(c)) as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Buildings or Public Works Financed in Whole or in Part by Loans or Grants of the United States"). The Act provides that the Consultant and any subcontractors shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public facilities, to give up any part of the compensation to which they are otherwise entitled. The Owner shall report all suspected or reported violations to EDA.
- (f) **Subcontracts.** The Consultant and any subcontractors will insert in any subcontracts the clauses contained in 29 CFR §§ 5.5(a)(1) through (10) and such other clauses as EDA or its designee may require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.
- (g) **Contract termination; debarment.** The breach of the Contract clauses in 29 CFR Part 5.5 may be grounds for termination of the Contract, and for debarment as a Consultant and a subcontractor as provided in 29 CFR § 5.12.
- (h) **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.
- (i) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Consultant (or any of its subcontractors) and EDA or its designee, the U.S. Department of Labor, or the employees or their representatives.
- (j) **Certification of Eligibility.**
- (1) By entering into this Contract, the Consultant certifies that neither it nor any person or firm that has an interest in the Consultant's firm is a person or firm



ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(2) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

8. **LABOR STANDARDS - CONTRACT WORK HOURS AND SAFETY STANDARDS ACT** - As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(a) **Overtime requirements.** No Consultant or subcontractor contracting for any part of the Contract work, which may require or involve the employment of laborers or mechanics, shall require or permit any such laborer or mechanic in any workweek in which that person is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(b) **Violation; liability for unpaid wages, liquidated damages.** In the event of any violation of the clause set forth in Paragraph (a) of this section, the Consultant and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Consultant and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in Paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

(c) **Withholding for unpaid wages and liquidated damages.** EDA or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Consultant or subcontractor under any such Contract or any other federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in Paragraph (b) of this section.

(d) **Subcontracts.** The Consultant or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (a) through (c) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in Paragraphs (a) through (c) of

this section.

## **9. EQUAL EMPLOYMENT OPPORTUNITY**

- (a) The Recipient hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from EDA, the following equal opportunity clause:

During the performance of this Contract, the Consultant agrees as follows:

- (1) The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Consultant agrees to post in conspicuous places available to employees and applicants for employment notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The Consultant will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided advising the said labor union or workers representatives of the Consultant's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and pursuant to rules, regulations, and orders of the Secretary of Labor and will permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the Consultant's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other

sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulations or order of the Secretary of Labor, or as otherwise provided by law.

- (7) The Consultant will include the portion of the sentence immediately preceding Paragraph 17(a) (1) and the provisions of Paragraphs 17(a)(1) through (6) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as EDA or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Consultant becomes involved in or is threatened with litigation with or by a subcontractor or vendor as a result of such direction by EDA or the Secretary of Labor, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.
- (8) The Recipient further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally-assisted construction work. Provided, however, that if the Recipient so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government that does not participate in work on or under the Contract.
- (9) The Recipient agrees that it will assist and cooperate actively with EDA and the Secretary of Labor in obtaining the compliance of Consultants and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish EDA and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist EDA in the discharge of the EDA's primary responsibility for securing compliance.
- (10) The Recipient further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Consultant debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Consultants and subcontractors by EDA or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the Recipient agrees that if it fails or refuses to comply with these undertakings, EDA may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this EDA financial assistance; refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(b) Exemptions to Above Equal Opportunity Clause (41 CFR Chapter 60):

- (1) Contracts and subcontracts not exceeding \$10,000 (other than Government bills

of lading) are exempt. The amount of the Contract, rather than the amount of the federal financial assistance, shall govern in determining the applicability of this exemption.

(2) Except in the case of subcontractors for the performance of construction work at the site of construction, the clause shall not be required to be inserted in subcontracts below the second tier.

(3) Contracts and subcontracts not exceeding \$10,000 for standard commercial supplies or raw materials are exempt.

10. **DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSIONS** - As required by Executive Order 12549, *Debarment and Suspension*, and implemented at 2 CFR Part 1326, for prospective participants in lower tier covered transactions (except subcontracts for goods or services under the \$25,000 small purchase threshold unless the sub-recipient will have a critical influence on or substantive control over the award), as defined at 2 CFR Part 1326.

(a) By entering into this Contract, and by further executing Form CD-512, the Consultant and subcontractors certify, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any federal department or agency.

(b) Where the Consultant or subcontractors are unable to certify to any of the statements in this certification, the Consultant or subcontractors shall attach an explanation to this bid.

(1) **Access to Information.** It is agreed that all information, data, reports and records and/or other information as is existing, available and necessary for the carrying out of the work outlined above shall be furnished to the District by the and its agents. No charge will be made to the District for such information and the Consultant and its agents will cooperate with the District in every way possible to facilitate the performance of the work described in the Contract.

(2) **Termination of Contract.** If, through any cause, the District shall fail to fulfill in a timely and proper manner its obligation under this Contract, or if the District shall violate any of the covenants, agreements, or stipulations of this Contract, the Owner shall thereupon have the right to terminate this Contract by giving written notice to the District of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. If the Contract is terminated by the Owner as provided herein, the District will be paid for the time provided and expenses incurred up to the termination date.

If the contract is terminated by the as provided herein, all finished or unfinished documents, information or reports prepared by the District under this Contract shall, at the option of the Owner, become its property and the District shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the District shall not be relieved of liability to the for damages sustained by the Owner by virtue of any breach of the Contract by

the District, and the Owner may withhold any payments to the District for the purpose of set-off until such time as the exact amount of damages due the Owner from the District is determined.

- (3) **Termination for Convenience of the Owner.** The Owner may terminate this Contract at any time by giving at least ten (10) days notice in writing to the District. If the Contract is terminated by the Owner as provided herein, the District will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the District, Paragraph 1 hereof relative to termination shall apply.
- (4) **Changes.** The Owner may, from time to time, request changes in the scope of the services of the District to be performed hereunder. Such changes, including any increase or decrease in the amount of the District's compensation which are mutually agreed upon by and between the Owner and the District shall be incorporated in written amendments to this Contract.
- (5) **Reports and Information.** The District, at such times and in such forms as may require, shall furnish the Owner such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

## 11. INTELLECTUAL PROPERTY RIGHTS.

- (a) **Inventions.** The intellectual property rights to any invention made by a Recipient under a DOC Award are determined by the Bayh-Dole Act, as amended (Pub. L. No. 96-517), and codified in 35 U.S.C. § 200 *et seq.*, except as otherwise required by law. The specific rights and responsibilities are described in more detail in 37 CFR Part 401, and in the particular, in the standard patent rights clause in 37 CFR § 401.14, which is hereby incorporated by reference into this Award.

### (1) Ownership.

- (i) Recipient. The Recipient has the right to own any invention it makes (conceived or first reduced to practice) or that is made by its employees. The Recipient may not assign its rights to a third party without the permission of the Department unless it is to a patent management organization (i.e., a university's research foundation.) The Recipient's ownership rights are subject to the Federal Government's nonexclusive paid-up license and other rights.
- (ii) Department. If the Recipient elects not to own or does not elect rights or file a patent application within the time limits set forth in the standard patent rights clause, the Department may request an assignment of all rights, which is assignment is normally subject to a limited royalty free non-exclusive license for the Recipient. The Department owns any invention made solely by its employees, but may license the Recipient in accordance with the procedures in 37 CFR Part 404.
- (iii) Inventor/Employee. If neither the Recipient nor the Department is interested

in owning an invention by a Recipient employee, the Recipient, with the written concurrence of the Department's Patent Counsel, may allow the inventor/employee to own the invention subject to certain restrictions as described in 37 CFR § 401.9.

- (2) **Joint Inventions.** Inventions made jointly by a Recipient and a Department employee will be owned jointly by the Recipient and DOC. However, the Department may transfer its rights to the Recipient as authorized by 35 U.S.C. § 202(e) and 37 CFR § 401.10 if the Recipient is willing to patent and license the invention in exchange for a share of "net" royalties based on the number of inventors (e.g., 50-50 if there is one Recipient and Department employee). The agreement will be prepared by the Department's Patent Counsel and may include other provisions, such as a royalty free license to the Federal Government and certain other entities. The Recipient also is authorized to transfer its rights to the Federal Government, which can agree to share royalties similarly as described above (35 U.S.C. § 202(e)).
- (3) **Responsibilities –iEdison.** The Recipient has responsibilities and duties set forth in the standard patent rights clause, which are not described below. The Recipient is expected to comply with all the requirements of the standard patent rights clause and 37 CFR Part 401. Recipients of DOC Awards are required to submit their disclosures and elections electronically using the Interagency Edison extramural invention reporting system (iEdison) at [www.iedison.gov](http://www.iedison.gov). The Recipient may obtain a waiver of this electronic submission requirement by providing DOC compelling reasons for allowing the submission of paper copies of reports related to inventions.
- (4) **Patent Notification Procedures.** Pursuant to Executive Order 12889, the Department is required to notify the owner of any valid patent covering technology whenever the Department or its Recipients, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the Recipient uses or has used patented technology under this Award without a license or permission from the owner, the Recipient must notify the Grants Officer. However, this notice does not necessarily mean that the Government authorizes and consents to any copyright or patent infringement occurring under the financial assistance.
- (5) **Data, Databases, and Software.** The rights to any work produced or purchased under a DOC Award are determined by 15 CFR §§ 14.36 or 24.34, as applicable. Such works may include data, databases, or software. The Recipient owns any work produced or purchased under a DOC Award subject to the Department's right to obtain, reproduce, publish, or otherwise use the work or authorize others to receive, reproduce, publish, or otherwise use the data for Federal Government purposes.
- (6) **Copyright.** The Recipient may copyright any work produced under a DOC Award subject to the Department's royalty-free, non-exclusive, and irrevocable right to reproduce, publish or otherwise use the work or authorize others to do so for Federal Government purposes. Works jointly authored by the Department and

Recipient employees may be copyrighted, but only the part authored by the Recipient is protected under 17 U.S.C. § 105, which provides that works produced by Federal Government employees are not copyrightable in the United States. If the contributions of the authors cannot be separated, the copyright status of the joint work is questionable. On occasion, the Department may ask the Recipient to transfer to the Department its copyright in a particular work when the Department is undertaking the primary dissemination of the work. Ownership of copyright by the Federal Government through assignment is permitted under 17 U.S.C. § 105.

**Airport Authority Learjet Parking Lot Construction Administration  
Revised Fee Schedule with Overtime Calculations - March 23, 2012  
Services Based on adjusted Budget**

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